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OF MONTANA

REVISED CODES OF MONTANA

VOLUME 4
Part 1
1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 4 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 4 (PART 1) THROUGH VOLUME 397, PACIFIC REPORTER (2ND SERIES)

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For index see pocket supplement to Replacement Volume 9

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TITLE 56—NOTARIES AND COMMISSIONERS OF DEEDS

CHAPTER 1—NOTARIES PUBLIC

56-107. (391) **Repealed.**

Repeal

This section (Sec. 914, Pol. C. 1895), relating to protests of bills or notes, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

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Cited in Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 517.

TITLE 58—OBLIGATIONS

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CHAPTER 3—TRANSFER OF OBLIGATIONS

58-303. (7415) Nonnegotiable instrument may be transferred.

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58-503. (7458) Satisfaction, what constitutes.

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Goggins v. Bookout, 141 M 449, 378 P 2d 212.

58-509. (7464) Obligation extinguished by release.

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A release, being a contract, is subject to rescission for the same reasons as other contracts, including fraud or mistake of fact. Westfall v. Motors Ins. Corp., 140 M 564, 374 P 2d 96, 98, 99.

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58-607. (7579) Responsibility for willful acts, negligence, etc.

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TITLE 59—OFFICES AND OFFICERS

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CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

Section 59-516. Certain records to be destroyed after twenty-five years.
59-516.1. Security agreements.
59-538. Expenses of persons in state service—per diem allowance.

59-516. (455.4) **Certain records to be destroyed after twenty-five years.** Any claim, warrant, voucher, bond or treasurer's general receipt may be destroyed by any county, city or town officer after a period of twenty-five years.

History: En. Sec. 4, Ch. 92, L. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963.

Amendment

The 1963 amendment completely rewrote this section, which formerly read: "Under no circumstances shall any claim, warrant, voucher, bond or treasurer's general receipt be destroyed by any county, city or town officer."

59-516.1. Security agreements. Termination statements filed under the Uniform Commercial Code—Secured Transactions shall be retained by the filing officer for a period of eight (8) years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code—Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of eight (8) years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed. [Effective January 1, 1965.]

History: En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963.

59-538. Expenses of persons in state service—per diem allowance. Every person engaged in any service in every department of state, inclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, ten dollars ($10) per day for such travel within the state

of Montana and sixteen dollars ($16) per day for such travel outside the state of Montana; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310; and provided further that the provisions of this act shall not apply to the elective state public officers of the state of Montana who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed fifteen dollars ($15) per day.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963.

Amendment

The 1963 amendment increased per diem allowance within the state from $8 to $10 and per diem allowance without the state from $11 to $16.

CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

Section 59-801. Mileage of all officers.
59-802. Same—liability of approving board for exceeding authorized amount.

59-801. (4884) **Mileage of all officers.** Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of eight cents (8¢) per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1933; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963.

Amendment

The 1963 amendment inserted "or airplanes" following "when using their own automobiles"; and inserted "by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane."

59-802. (4884.1) **Same—liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive eight cents (8¢) per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per air mile for each mile necessarily traveled by airplane unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 1, Ch. 80, L. 1923; amd. Sec. 3, Ch. 16, L. 1933; amd. Sec. 2, Ch. 121, L. 1941; amd. Sec. 2, Ch. 201, L. 1947; amd. Sec. 2, Ch. 93, L. 1949; amd.

Sec. 2, Ch. 124, L. 1951; amd. Sec. 2, Ch. 106, L. 1961; amd. Sec. 2, Ch. 123, L. 1963.

Amendment

The 1963 amendment inserted "or airplane" following "to use his own automobile"; inserted "by automobile and twelve cents (12¢) per air mile for each mile necessarily traveled by airplane"; and deleted a concluding sentence which read: "Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad or bus."

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

Section 59-1103.1. Contributions by state employees.
59-1104. Plans for coverage of employees of political subdivisions.
59-1105. Contribution account.
59-1106. Costs of administration.
59-1110. Eligibility of staff and teachers—payroll deductions.

59-1103.1. Contributions by state employees. (a) Every employee of the state whose services are covered by an agreement entered into under section 59-1103 shall be required to pay for the period of such coverage, contributions, with respect to wages (as defined in section 59-1102), equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

(b) and (c). * * * [Same as parent volume.]

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the phrase "into the contribution fund established by section 59-1105" after "of such coverage" in the first sentence in subd. (a).

59-1104. Plans for coverage of employees of political subdivisions. (a) and (b). * * * [Same as parent volume.]

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay with respect to wages (as defined in section 59-1102), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 59-1102.1.

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contributions from his wages as and when paid. Contributions so collected shall partially discharge the liability of such political subdivision or instrumentality under paragraph (1) of this

subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (c)(1), deleted the phrase "into the contribution fund" after "shall pay"; and, in the second sentence in subd. (c)(2), substituted "shall partially discharge the liability" for "shall be paid into the contribution fund in partial discharge of the liability."

59-1105. Contribution account. (a) There is hereby established, in place of the fund known as the contribution fund, a contribution account in the agency fund. Such account shall consist of and there shall be deposited in such account: (1) all contributions, interest and penalties collected under sections 59-1103.1 and 59-1104; (2) all moneys appropriated thereto by the legislative assembly of the state of Montana; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the account; (4) interest earned upon any moneys in the account; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution account shall be used and administered exclusively for the purpose of this act. Withdrawals from such account shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 59-1103; (B) payment of refunds provided for in section 59-1103.1; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 59-1102.1 and the Social Security Act.

(d) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in place of the fund known as the contribution fund, a contribution account in the

agency fund" for "a special fund to be known as the contribution fund" in the first sentence of subsection (a); substituted "account" for "fund" in thirteen places throughout the section; deleted the words "shall be established and held separate and apart from any other funds or moneys of the state and" which preceded "shall be used" in the first sentence of subsection (b); deleted the words "shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the state agency and" which followed "The treasurer of the state" at the beginning of subsection (d); and substituted "the state agency" for "it" after "warrants drawn upon" in subsection (d).

59-1106. Costs of administration. All costs allocable to the administration of this chapter shall be charged to and paid to the earmarked revenue fund, social security division account, by each department of the state and by the participating divisions and instrumentalities and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "the earmarked revenue fund, social security division account" for "the general fund" after "paid to."

59-1110. Eligibility of staff and teachers—payroll deductions. Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state board of equalization, or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state, and held in the contributions' fund as provided by sections 59-1101 to 59-1108. For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social Security Act shall be the first obligation against any state funds received for school support by any school district, high school district or county high school, and shall first be paid therefrom.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965.

Amendment

The 1965 amendment added the last sentence.

TITLE 60—OIL AND GAS

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2. Petroleum products—standards—regulation of manufacture and distribution, 60-223 to 60-233.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

Section 60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys.
60-147. Transfer of jurisdiction and record.

60-127. Powers and duties of commission.

References

Cited in Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation, 339 F 2d 360, 361.

60-129. Well spacing units—orders.

References

Cited in Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation, 339 F 2d 360, 361.

60-130. Pooling of interest within spacing unit, etc.

Indian Lands

In suit in federal court by Indian tribes to restrain the Montana oil and gas conservation commission from enforcing an order "pooling" lands owned by the Indian tribes with lands of another to form a "spacing unit," the matter in controversy was not the lands or the royalties, but the regulation and the right to be free from it, and evidence adduced by the Indian tribes, which did not show facts supporting determination that lands or expected royalties exceeded $10,000, failed to show jurisdictional amount in controversy. Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation, 339 F 2d 360, 363.

60-139. Repealed.

Repeal

This section (Sec. 16, Ch. 238, L. 1953), relating to property and records of the former oil conservation board and of the board of railroad commissioners, was repealed by Sec. 242, Ch. 147, Laws 1939.

60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys. A to C. * * * [Same as parent volume.]

D. All money collected under the provisions of this act shall be deposited in the earmarked revenue fund by the state treasurer of the state of Montana, and shall be used for the purpose of paying all expenses of said commission and for no other purpose; all such moneys shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any such money remaining shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved as provided by law, and paid by the state treasurer.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed

necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first sentence of subsection D for "a special fund to be known as the 'Oil and Gas Conservation Fund' "; deleted the words "the fund to be raised" which preceded "shall be used for the purpose" in the first sentence of subsection D; substituted "such moneys" for "moneys from this fund" in the final clause of the first sentence of subsection D; substituted "such money remaining" for "balance remaining in said fund" in the second sentence of subsection D; deleted the words "upon warrants drawn by the state auditor out of the oil and gas conservation fund" from the end of subsection D; and deleted the words "or otherwise accruing to said fund" from the end of the first sentence of subsection E.

60-147. Transfer of jurisdiction and record. On or before the effective date, as hereinafter provided, all jurisdiction, control, supervision, custody, property and records of the said station shall be and become transferred from the jurisdiction of the bureau to the commission, and the said commission shall, after the effective date hereinafter provided, assume the said jurisdiction, control, supervision and custody of all property, real and personal, and records located at or pertaining to the said station; that the property so transferred shall be and become the property of the commission; that the operation and maintenance of the said station shall be done and performed by the commission from and after the said effective date hereinafter provided, and the necessary expenditures therefor shall be paid from oil and gas conservation commission moneys, in the earmarked revenue fund upon proper vouchers, by the state treasurer; that the said transfer of property, real, personal, or mixed, and the records from the bureau to the commission shall be made without lien, encumbrance, or obligation of any sort, upon said property and records, and it is the express intention hereby to transfer said property and records to the commission free and clear.

History: En. Sec. 2, Ch. 32, L. 1957; amd. Sec. 161, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "oil and gas conservation commission moneys, in the earmarked revenue fund" for "oil and gas conservation commission fund."

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION

Section 60-223. Petroleum products dealers—definition of terms.
60-224. License required as a condition precedent to the right to do business.
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60-232. Rules, regulations and standards.
60-233. Penalty for violation of this act.

60-201, 60-202. (3913.1, 3913.2) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 109, L. 1927; Secs. 2, 3, Ch. 131, L. 1955; Secs. 1, 2, Ch. 96, L. 1957; Sec. 1, Ch. 146, L. 1961; Sec. 1, Ch. 220, L. 1961), relating to the licensing of petroleum products dealers, were repealed by Sec. 14, Ch. 153, Laws 1965. For present law, see secs. 60-223 to 60-233.

60-223. Petroleum products dealers—definition of terms. Meaning of terms when used in this act: (1) The terms "state sealer" and "deputy sealer" mean, respectively, the commissioner of agriculture of the state of Montana and his deputy sealers of weights and measures of the state of Montana.

(2) The words "sell" and "sale" shall also mean barter and exchange.

(3) The term "dealer" means all persons, firms, copartnerships, corporations, trusts or agencies.

(4) A petroleum dealer is a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil and greases, or any oil or gas or oil and gas product, except as otherwise defined as a liquefied petroleum dealer in subsection five (5).

(5) A liquefied petroleum dealer is a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

History: En. Sec. 1, Ch. 153, L. 1965.

Title of Act

An act to provide for the licensing and regulation of all petroleum dealers and liquefied petroleum dealers who sell or or offer to sell to a consumer and the licensing of any device and the regulation of its use when used for the purpose of delivering or distributing such products as are sold or offered for sale by such dealers; repealing sections 60-201 and 60-202, R. C. M. 1947.

60-224. License required as a condition precedent to the right to do business. It shall be a violation of this act for any petroleum dealer or liquefied petroleum dealer to do business in the state of Montana until a nontransferable license has been issued to said dealer by the state sealer. Such license shall be obtained by the dealer by making application to the state sealer upon such blank forms as may be provided by the state sealer for the right to do business in the state of Montana, and after the application has been made and filed the license, without fee, shall be issued. Any dealer who has not applied for and been issued a license for the right to do business in the state of Montana by the state sealer and who is found

selling or offering for sale or delivering or distributing to a consumer shall, upon conviction, be fined as provided by this act, and any vehicle tank, or vehicle tank and meter, or any other measuring device used by said dealer for such delivery or distribution may be confiscated and seized as evidence by the state sealer or his deputy sealers. The state sealer or his deputy sealers shall not be liable to the owner or any other persons, firms, copartnerships, corporations, trusts or agencies for damages, directly or indirectly, caused by or resulting from such seizure.

History: En. Sec. 2, Ch. 153, L. 1965.

60-225. Place of business license. Each petroleum dealer or liquefied petroleum dealer shall pay a license fee of two dollars ($2) for each place of business, but the fee may be deducted from any weight or measuring device test fee or license fee required by this act, or any other act, relating to weights and measures.

History: En. Sec. 3, Ch. 153, L. 1965.

60-226. Pump license fees. Each petroleum dealer shall pay a license fee of two dollars ($2) for each gasoline pump, diesel pump or fuel oil pump measuring device.

History: En. Sec. 4, Ch. 153, L. 1965.

60-227. Petroleum and liquefied petroleum meter license fees. All petroleum vehicle tank meters and bulk petroleum meters of two and one-half (2½) inches and under, six dollars ($6). All two and one-half (2½) inch and under petroleum meters for more than one fluid, ten dollars ($10). All bulk petroleum meters over two and one-half (2½) inch, ten dollars ($10). All petroleum meters over two and one-half (2½) inch for more than one fluid, fifteen dollars ($15). All liquefied petroleum liquid meters fifteen dollars ($15).

History: En. Sec. 5, Ch. 153, L. 1965.

60-228. Petroleum and liquefied petroleum vehicle tank license fees. The license fee for all petroleum or liquefied petroleum vehicle tanks without meters used for distribution of such products shall be as follows: Up to and including two hundred (200) gallons, eight dollars ($8); over two hundred (200) and including three hundred (300) gallons, ten dollars ($10); over three hundred (300) and including five hundred (500) gallons, twelve dollars ($12); over five hundred (500) and including one thousand (1,000) gallons, sixteen dollars ($16); over one thousand (1,000) and including two thousand (2,000) gallons, twenty dollars ($20); for each additional one thousand (1,000) gallons over two thousand (2,000) gallons, four dollars ($4).

All licenses shall be annual and nontransferable and shall expire December 31. There shall be an additional charge of fifty per cent (50%) on all license fees, required by this act, that are not paid before March 1 of each year, where the vehicle tank, or meter, or measuring device is in use. If such fee is not paid the equipment shall be sealed and removed from service, by the state sealer or his deputy sealers, and it shall be a

violation of this act for anyone to use the device or break the seal until all such fees have been paid.

History: En. Sec. 6, Ch. 153, L. 1965.

60-229. Dispensation of petroleum products. It shall be unlawful to make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the state sealer or his deputy sealers. Part of a compartment delivery can only be made by an approved, calibrated and sealed meter or an approved can. Gauge stick measurement will not be permitted. All tank markers must be positioned and sealed as provided by the state sealer. The state sealer shall, by proper regulation, fix fees for retesting meters or measuring devices or vehicle tanks used for distribution to a consumer by petroleum or liquefied petroleum dealers, and for any other special service rendered.

History: En. Sec. 7, Ch. 153, L. 1965.

60-230. Dispensation of liquefied products. It shall be unlawful to sell or deliver liquefied petroleum to a consumer, as a liquid, except as provided by this act. Full compartment sales or deliveries may only be made in a manner that shall be provided by the state sealer. All other sales or deliveries may only be made through a meter which has been approved, calibrated and sealed by the state sealer or his deputy sealers; or by weight, unless otherwise provided by the state sealer.

History: En. Sec. 8, Ch. 153, L. 1965.

60-231. Temperature correction of liquefied petroleum to sixty degrees (60°) Fahrenheit when sold to a consumer. It shall be a violation of this act to sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or by liquid measurement, the measurement of which has not been temperature corrected to sixty degrees (60°) Fahrenheit, unless otherwise provided by the state sealer. Temperature correction shall only be made by means of an automatic compensating device which has been approved, calibrated, and sealed by the state sealer or his deputy sealers; or by weight as provided by the state sealer.

History: En. Sec. 9, Ch. 153, L. 1965.

60-232. Rules, regulations and standards. The state sealer is hereby authorized to promulgate and adopt such rules, regulations and standards as he shall deem necessary for the administration and enforcement of this act.

History: En. Sec. 10, Ch. 153, L. 1965.

60-233. Penalty for violation of this act. Any dealer who by himself or by his servant or agent, or as the servant or agent of another person, violates any provision of this act or any rule or regulation adopted hereunder shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty-five ($25) nor more than one hundred ($100) dollars for each violation.

History: En. Sec. 11, Ch. 153, L. 1965.

Saving Clause

Section 12 of Ch. 153, Laws 1965 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 13 of Ch. 153, Laws 1965 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 14 of Ch. 153, Laws 1965 read "Repealing clause. Section 60-201 and 60-202, R. C. M. 1947, are repealed."

Effective Date

Section 15 of Ch. 153, Laws 1965 read "Effective date. This act is effective January 1, 1966."

TITLE 61—PARENT AND CHILD

Chapter 2. Adoption, 61-211, 61-212.

CHAPTER 2—ADOPTION

Section 61-211. Interlocutory and final decree.
61-212. Effect of final decree.

61-203. Who may adopt.

Res Judicata

Where the mother, of a child born out of wedlock, joined in and agreed to a petition allowing the natural father and his wife to adopt the child, the proceedings and resulting decree were res adjudicata and the mother of the child could not later attack the decree on the grounds that the father did not fit specifically any of the categories provided by this section. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-204. Venue.

Jurisdiction

This section relates to venue and not jurisdiction, and even though only one of joint petitioners in an adoption proceeding was a resident of the county in which the proceeding was held, this was sufficient to confer jurisdiction. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-205. Persons required to consent to the adoption.

Estoppel

Where the mother, of a child born out of wedlock, joined in and agreed to a petition allowing the natural father and his wife to adopt the child, the mother of the child was estopped from attacking the resulting decree of adoption two years later. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-211. Interlocutory and final decree. Upon examination of the report described in section 61-209, if such report has been deemed necessary by said court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why said petition should not be granted. Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P. If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all

persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

The petitioners and the child shall appear at said hearing, unless the presence of the child is waived by the court.

Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption; or on the father of an illegitimate child; or on any parent whose consent to adoption is not required under the provisions of section 61-205; and service of process shall not be made on any parent who has relinquished his child to the state department of public welfare or an adoption agency licensed by the state department of public welfare.

After an interlocutory decree, as aforesaid, has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the state department of public welfare, and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of said child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963.

Amendment

The 1963 amendment corrected a typographical error in the first paragraph and, in the third paragraph, substituted the reference to Rule 4 of the Montana Rules of Civil Procedure for a reference to former section 93-3014.

61-212. Effect of final decree. (1) After the final decree of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they

are the adoptive parents or the spouse of an adoptive parent shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

History: En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965.

Amendment

The 1965 amendment inserted "and the kindred of the adoptive parents" following "through the adoptive parents" and "and their kindred" following "and the adoptive parents" in the second sentence of subsection (1); and inserted "and the kindred of the natural parents" following "the natural parents" near the beginning of subsection (2).

TITLE 62—PARKS AND PUBLIC RECREATION

Chapter 3. State parks, 62-301, 62-304, 62-305, 62-307, 62-310, 62-311, 62-314.
4. Development of outdoor recreational resources, 62-401 to 62-404.
5. Horse racing, 62-501 to 62-514.

CHAPTER 2—CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS, PARKS AND RECREATIONAL FACILITIES

62-201. (5159) Public parks and grounds, civic and youth centers, etc.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

CHAPTER 3—STATE PARKS

Section 62-301. Purpose.
62-304. Powers and duties.
62-305. Disposal of fees and charges.
62-307. Connecting roads.
62-310. Establishment of state scientific and recreational park.
62-311. Rules and regulations governing use.
62-314. Penalties for violation of state park regulations.

62-301. Purpose. That for the purpose of conserving the scenic, historic, archaeologic, scientific and recreational resources of the state, and of providing for their use and enjoyment, thereby contributing to the cultural, recreational and economic life of the people and their health, the state fish and game commission (hereinafter referred to as commission) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953; amd. Sec. 1, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state fish and game commission" for "state highway commission."

62-304. Powers and duties. The commission is hereby authorized and directed to make a study to determine the scenic, historic, archaeologic, scientific and recreational resources of the state, and shall have power by purchase, lease, agreement, or by acceptance of donations, or condemnation, to acquire for and in the name of the state, any such areas, sites or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission shall also have power in its discretion to receive and accept in the name of the state, in fee or otherwise, any such areas, sites, or objects conveyed, entrusted, donated, or devised to the state, and with like discretion to accept gifts, bequests, or contributions of money or other property to be expended or used for any of the purposes of this act; provided, that no contract shall be entered into or other obligation incurred under the provisions of this act until moneys have been appropriated therefor by the legislature or are otherwise made available as herein provided. The commission shall also have jurisdiction,

custody and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments which are now under the control and management of the state, except wayside camps and other public conveniences acquired, improved and maintained by the state highway commission and contiguous to the state highway system.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "except" for "including" before "wayside camps and other public conveniences" near the end of the section.

Acquisition of Buffalo Jump Site

Chapter 70, Laws of 1965, authorized the board of land commissioners to acquire a particular tract known as the site of a buffalo jump and to turn the tract over to the fish and game commission. The act read: "An act to permit the state board of land commissioners to acquire a tract of land which is of archeological, historic or scientific interest and should be preserved for posterity; providing for an effective date.

"Section 1. The state board of land commissioners is hereby authorized to acquire Section 34, Township 1 N, Range 2E, M.P.M., which is of archeological, historic or scientific interest and should be preserved for the benefit of the people. The acquisition of such land may be by gift, bequest, purchase, lease, or exchange of other state land of equal value. The state board of land commissioners shall take title to such land in the name of the state for the use and benefit of the agency responsible for administering state parks. Upon acquisition of such land, the state agency responsible for administering state parks is hereby authorized to enter into contracts or agreements with the federal government, other departments or agencies of the state government, county and municipal government, as may be necessary to the proper care and management of the object to be protected and preserved for posterity.

"Section 2. This act shall be in full force and effect after its passage and approval. Approved February 26, 1965."

62-305. Disposal of fees and charges. The commission shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable. All moneys derived from the activities of the commission, except from conditional gifts, donations, bequests and endowments, shall be deposited in the state treasury to the credit of the general fund. Moneys derived from conditional gifts, donations, bequests and endowments may be deposited in the federal and private revenue fund.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "except from conditional gifts" for "and from unconditional gifts" near the beginning of the second sentence; substituted "the general fund" at the end of the second sentence for "the state park fund, which fund is hereby created, and shall constitute a continuing fund to be used and expended by the commission for any of the purposes of this act"; and added the third sentence.

62-307. Connecting roads. The state highway commission is hereby authorized to construct, improve and maintain with state highway funds connecting roads between existing state highways and state parks; provided, that each such road shall not exceed a total length of ten (10) miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state parks" immediately before the proviso for "lands and properties under the jurisdiction of the commission."

62-310. Establishment of state scientific and recreational park. That in order to preserve and protect the biological station grounds hereafter

referred to, and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the state fish and game commission is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding fifteen (15) acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state fish and game commission" for "state highway commission"; and deleted the words "established and" before "maintain a state scientific and recreational park."

62-311. Rules and regulations governing use. The state fish and game commission shall make such rules and regulations governing the park's use, occupancy and the protection of the remaining lands of said grant that the use of all of said lands for biological station purposes shall be promoted and continued; and the park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area; provided, however, that nothing herein contained shall operate to prevent the use of the area within the said park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965.

Amendment

The 1965 amendment deleted the words "That if and when said park is established" at the beginning of the section; substituted "state fish and game commission" for "state highway commission"; substituted "the park's use" for "its use"; and deleted "established and" before "maintained as to develop."

62-314. (1842.3) **Penalties for violation of state park regulations.** Any person who shall injure or damage any state or private property thereon or therein, or shall violate any of the regulations made by the state fish and game commission relating to the state parks, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500) or be imprisoned in the county jail for not more than six (6) months.

History: En. Sec. 3, Ch. 111, L. 1929; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965.

Amendment

The 1965 amendment deleted "in any unusual way" after "injure or damage"; and substituted "state fish and game commission" for "state highway commission."

CHAPTER 4—DEVELOPMENT OF OUTDOOR RECREATIONAL RESOURCES

Section 62-401. Legislative findings—purpose of act.
62-402. State agency for Land and Water Conservation Fund Act.
62-403. Compliance with federal act authorized—powers of commission.
62-404. Advisory and planning committee—composition and functions.

62-401. Legislative findings—purpose of act. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value.

This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this act to give authority to the Montana state fish and game commission to plan and develop outdoor recreational resources in the state which authority shall permit receiving and expending funds including federal grants for this purpose.

History: En. Sec. 1, Ch. 235, L. 1965.

Title of Act

An act to permit the Montana fish and game commission to plan and develop outdoor recreational resources in the state, which authority shall permit receiving and expending funds including federal grants for this purpose; creating an outdoor recreation advisory and planning committee; providing that the act is effective on passage and approval.

62-402. State agency for Land and Water Conservation Fund Act. The fish and game commission is hereby designated as the state agency to represent and act for the state for the purpose of implementing the "Land and Water Conservation Fund Act of 1965."

History: En. Sec. 2, Ch. 235, L. 1965.

Compiler's Note

The Land and Water Conservation Fund Act of 1965 may be found at 16 U. S. Code 4601-4 to 4601-11.

62-403. Compliance with federal act authorized—powers of commission. The fish and game commission shall do those things necessary to comply with the provisions of the "Land and Water Conservation Fund Act of 1965." Among other things, the fish and game commission may

(1) Prepare a comprehensive statewide outdoor recreational plan which shall contain

(a) An evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana, and

(b) A program for implementation of the plan.

(2) Accept and administer moneys paid by the secretary of the interior for approved projects.

(3) Contract with other state agencies, cities, counties and other political subdivisions of the state, private organizations, and agencies of the federal government.

(4) Acquire, other than by eminent domain, and develop outdoor recreational areas and facilities, and land and waters, and interests in land and waters for such areas and facilities.

(5) For the purpose of implementing the "Land and Water Conservation Fund Act of 1965," co-ordinate its activities with, and represent the interests of, all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: En. Sec. 3, Ch. 235, L. 1965.

62-404. Advisory and planning committee—composition and functions. There is created the outdoor recreation advisory and planning committee consisting of not more than twenty (20) members. The members of the committee shall be appointed by the governor and shall serve at the pleasure of the governor. The committee shall elect a chairman and any other necessary officers.

The function of the committee is to advise and consult with the fish and game commission on all phases of this act.

History: En. Sec. 4, Ch. 235, L. 1965.

Effective Date

Section 5 of Ch. 235, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

CHAPTER 5—HORSE RACING

Section 62-501. Horse racing commission created—appointment—removal—claims.
62-502. Definitions.
62-503. Chairman—quorum—costs.
62-504. Commission's annual report—public record.
62-505. Duties of commission and licensees—license fee.
62-506. Authority of commission.
62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing.
62-508. Penalty for violations of law—power of commission.
62-509. Race exclusively for Montana bred horses—bonus for winner.
62-510. Public liability insurance.
62-511. Parimutuel betting—other betting illegal.
62-512. Distributions of deposits—breakage.
62-513. Licensee's right to withhold deposits.
62-514. Allocation of license tax receipts.

62-501. Horse racing commission created—appointment—removal—claims. There is hereby created the Montana horse racing commission, to consist of three (3) members, who shall be citizens, residents and qualified electors of the state of Montana. At least one (1) member shall be a breeder of thoroughbred or quarter horses.

The members of said commission shall be appointed by the governor within thirty (30) days after this act takes effect, and one (1) for a term to expire on the Thursday following the second Monday in January, 1966, and one (1) for a term to expire on the Thursday following the second Monday in January, 1967, and one (1) for a term to expire on the Thursday following the second Monday in January, 1968, and upon the expiration of the term of any member of said commission, the governor shall appoint a successor for a term of three (3) years with the consent of the senate.

Each member shall hold office until his successor is appointed and qualified. Vacancies on the commission shall be filled by appointment to be made by the governor for the unexpired term.

Any member may be removed from office by the governor for cause after a public hearing. Notice of said hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for said hearing.

History: En. Sec. 1, Ch. 196, L. 1965.

Title of Act

An act establishing a horse racing commission and defining its powers and duties, repealing sections 94-2425, 84-6501, R. C. M. 1947; providing for an effective date.

62-502. Definitions. As used in this act.

(1) "Commission" means Montana horse racing commission.

(2) "Persons" means individuals, firms, corporations and associations.

(3) "Race meet" means and includes any exhibition of thoroughbred, purebred, and/or registered horse racing where the parimutuel system of wagering is used. Singular shall include the plural and plural shall include the singular; and words importing one gender shall be regarded as including all other genders.

History: En. Sec. 2, Ch. 196, L. 1965.

62-503. Chairman—quorum—costs. The commission shall organize by electing one (1) of its members chairman. Two (2) members of the commission shall constitute a quorum for the transaction of any and all business of the commission.

The commission may incur all such costs, charges and expenses as are reasonably necessary in carrying out the intent and purposes of this act.

History: En. Sec. 3, Ch. 196, L. 1965.

62-504. Commission's annual report—public record. The commission shall keep detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued, reports of which shall be embodied in an annual report which the commission shall prepare and submit to the governor on or before the thirty-first day of December of each year. Said annual report shall cover the activities of the commission for the preceding year in addition to the aforementioned.

All records of the commission shall be public records, and as such subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965.

62-505. Duties of commission and licensees—license fee. It shall be the duty of the commission, as soon as possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern race meets and the parimutuel system. Such rules and regulations shall include, but shall not be limited to the following, to wit: definitions, auditing and supervision of the parimutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have any function whatsoever to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interests of breeding and racing in the state of Montana, and the veterinary practices and standards which must be observed in connection with race meets. Rules pertaining to medication, testing of horses, examining horses prior to racing, and banning horses from running shall meet the approval of an advisory committee of the Montana veterinary medical association. It shall be the duty of each person holding a license under the authority of the act, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with this act and with all rules and regulations promulgated and all orders issued by the commission.

It shall be unlawful for any owner, trainer, or jockey, to participate in any race meet without first securing and having in full force and effect,

an annual license therefor from the commission. The license fee for such annual license shall be five dollars ($5), which shall be paid to the commission and used for operating expenses of the commission. All claims and expenditures under this act shall be first audited and passed upon by the commission. When they are approved, they shall be paid from the license fees. If the license fees exceed the commission expenses, the excess shall be deposited to the state general fund, provided that in no event shall commission expenses be paid in an amount in excess of the aforementioned license fees.

History: En. Sec. 5, Ch. 196, L. 1965.

62-506. Authority of commission. The commission created by this act is hereby authorized and it shall be its duty to license, regulate, and supervise all race meets held in this state under the terms of this act, and to cause the various places where race meets are held to be visited and inspected at least once a year.

History: En. Sec. 6, Ch. 196, L. 1965.

62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing. It shall be unlawful for any person to hold any race meet in this state without having first obtained and having in force and effect a license issued by the commission as in this act provided. Every person making application for a license to hold a race meet, under the provisions of this act, shall file an application with the commission which shall set forth the time, place and number of days such will continue, and such other information as the commission may require. There will be no license fee charge for a racing meet except as now provided in 84-6502.

No person who has been convicted of any crime involving moral turpitude shall be issued a license of any kind, nor shall any license be issued to any person who has violated the terms or provisions of this act, or any of the rules and regulations of the commission, or who has failed to pay any of the fees, taxes or moneys required under the provisions of this act.

All applications to hold race meets shall be submitted to the commission which shall act upon such applications within thirty (30) days. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue.

It shall be the duty of the commission to require that fairs conducting race meets in conjunction with their regularly scheduled fair shall meet the requirements of the rules and regulations set up by the racing commission prior to granting them their license. Any unexpired license held by any person who violates any of the provisions of this act, pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this act, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice, in writing, shall be given the licensee, specifying the grounds for the

proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

History: En. Sec. 7, Ch. 196, L. 1965.

62-508. Penalty for violations of law—power of commission. Any person holding a race meet, and any owner, trainer, or jockey participating in a race meet, without first being licensed by the commission, and any person willfully violating any of the terms or provisions of this act is guilty of a misdemeanor.

The commission shall have the power to exclude from any and all race courses in this state any person whom the commission deems detrimental to the best interest of racing, or any person who willfully violates any of the provisions of this act or any rule, regulation, or order of the commission.

It shall be lawful to conduct race meets on or at a race track or otherwise, at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965.

62-509. Race exclusively for Montana bred horses—bonus for winner. For the purpose of encouraging the breeding, within the state, of valuable thoroughbred, purebred, quarter horse, appaloosa and/or registered horses, at least one (1) race each day at each race meet shall be limited to Montana bred horses. If in the opinion of the commission sufficient competition cannot be had among such class of horses, said race may be eliminated for said day and a substitute race provided instead.

A sum equal to ten per cent (10%) of the first money of every purse won by a Montana bred horse shall be paid by the licensee conducting the race meet to the breeder of such horse.

History: En. Sec. 9, Ch. 196, L. 1965.

62-510. Public liability insurance. For the protection of the public, and all members thereof, the exhibitors and visitors, every person licensed to conduct a race meet under the provisions of this act shall carry public liability insurance in an amount and form of contract and with a company authorized to do business in Montana.

History: En. Sec. 10, Ch. 196, L. 1965.

62-511. Parimutuel betting—other betting illegal. Any licensee conducting a race meet under this act may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted by such licensee at such race meet, and such parimutuel system conducted at such race meet shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto and to the rules and regulations of the commission, to be held or construed to be unlawful, other statutes of this state to the contrary notwithstanding.

It shall be unlawful to conduct pool selling, book making, or to circulate handbooks, or to bet or wager on a race of any licensed race meet,

other than by the parimutuel system, and in the race meet grounds or enclosure where the race is held, and it shall further be unlawful to permit any minor to use the parimutuel system.

History: En. Sec. 11, Ch. 196, L. 1965.

62-512. Distributions of deposits—breakage. Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which shall not exceed twenty per cent (20 %) of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as "breakage."

History: En. Sec. 12, Ch. 196, L. 1965.

62-513. Licensee's right to withhold deposits. In the event any government or governmental agency imposes a levy on a licensee, by a special tax on the money so deposited under the parimutuel system, or upon or against his receipts therefrom, the said licensee may withhold in addition to the aforesaid per centum and breakage the amount of the tax so levied.

History: En. Sec. 13, Ch. 196, L. 1965.

62-514. Allocation of license tax receipts. License tax receipts on racing associations shall be collected and disposed of as provided by section 84-6502, R. C. M. 1947.

History: En. Sec. 14, Ch. 196, L. 1965.

Repealing Clause

Section 15 of Ch. 196, Laws 1965 read "Repealing section 94-2425, R. C. M. 1947, and section 84-6501, R. C. M. 1947, enacted as section 1, chapter 57, Laws of 1961, and all acts and parts of acts in conflict herewith."

Separability Clause

Section 16 of Ch. 196, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 17 of Ch. 196, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 5, 1965.

TITLE 63—PARTNERSHIP

CHAPTER 6—PARTNERSHIP—USE OF FICTITIOUS NAME

63-601. (8019) Fictitious name.

Application of Law

The filing of the certificate under this section is not a prerequisite to a valid partnership or engaging in business as a partnership. First Security Bank v. United States, 213 F Supp 362, 367.

63-602. (8020) Certificate—when to be filed.

Application of Law

The disability imposed by this section is limited to maintaining an action on an account or contract. First Security Bank v. United States, 213 F Supp 362, 367.

TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter 1. Persons, minors, adults and those of unsound mind, 64-106.1.
3. Freedom from discrimination, 64-301 to 64-303.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

Section 64-106.1. Capacity of minors to borrow money for education.

64-106.1. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school, shall have full legal capacity to act in his own behalf and shall have all the rights, powers and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963.

Title of Act

An act to establish legal capacity and obligation of minors in contracting to borrow money to finance education beyond high school.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION OF PERSONAL RELATIONS

64-203. (5690) **Libel defined.**

Libel per Se

Where complaint alleges no special damages, the action is brought on the theory of libel per se and not per quod. Steffes v. Crawford, 143 M 43, 386 P 2d 842.

CHAPTER 3—FREEDOM FROM DISCRIMINATION

Section 64-301. Freedom from discrimination as civil right—employment—public accommodations.
64-302. Definition of terms.
64-303. Discrimination as misdemeanor.

64-301. Freedom from discrimination as civil right—employment—public accommodations. The right to be free from discrimination because of race, creed, color or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) The right to obtain and hold employment without discrimination.

(2) The right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement.

History: En. Sec. 1, Ch. 201, L. 1965.

Title of Act

An act to provide for civil rights; defining terms; and providing for a penalty for violations.

64-302. Definition of terms. Terms used in this act shall have the following definitions:

(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, co-operatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage or amusement exept for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited.

(d) "National origin" includes "ancestry."

(e) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal service, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amusement, recreation of public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation,

which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

History: En. Sec. 2, Ch. 201, L. 1965.

64-303. Discrimination as misdemeanor. Every person who denies to any other person because of race, creed, color or national origin the right to employment; (a) by refusing to hire, (b) by discharging, (c) by barring from employment, or (d) by discriminating against such person in compensation or in other terms or conditions of employment; and every person who denies to any other person because of race, creed, color or national origin the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 201, L. 1965.

TITLE 65—PLEDGES AND TRUST RECEIPTS

Chapter 2. Uniform Trust Receipts Act, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 1—PLEDGE

65-104. (8295) Repealed.

Repeal

This section (Sec. 3893, Civ. C. 1895), relating to increase of property pledged, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

65-107. (8298) Repealed.

Repeal

This section (Sec. 3896, Civ. C. 1895), relating to the pledge of loaned property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

65-115 to 65-126. (8306 to 8317) Repealed.

Repeal

These sections (Secs. 3904 to 3915, Civ. C. 1895; Secs. 5788 to 5799, Rev. C. 1907; Sec. 1, Ch. 102, L. 1941), relating to the rights and duties of pledgees, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 2—UNIFORM TRUST RECEIPTS ACT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

65-201 to 65-219. Repealed.

Repeal

These sections (Secs. 1 to 19, Ch. 147, L. 1945; Sec. 13, Ch. 117, L. 1961), the Uniform Trust Receipts Act, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 66—PROFESSIONS AND OCCUPATIONS

Chapter 1. Architecture—regulation of practice, 66-108, 66-109, 66-114, 66-115.
2. Auctioneers and auction sales, 66-202, 66-203.1, 66-204.
4. Barbers and barber shops, 66-407, 66-408.
5. Chiropractic—regulation of practice, 66-512 to 66-514.
6. Chiropody—regulation of practice, 66-603, 66-607, 66-608.
8. Cosmetology (beauty shops) regulation, 66-809, 66-815.
9. Dentistry—regulation of practice, 66-904, 66-906, 66-909, 66-919, 66-925.
10. Medicine—regulation of practice, 66-1008, 66-1009.
12. Nursing—regulation of practice, 66-1228, 66-1234, 66-1236, 66-1237.
13. Optometry—regulation, 66-1307, 66-1311, 66-1314, 66-1315.
14. Osteopathy—regulation of practice, 66-1405, 66-1410.
15. Pharmacy—regulation of sale of drugs and medicines, 66-1505, 66-1527.
18. Public accountants—regulation, 66-1812.
19. Real Estate License Act, 66-1924 to 66-1946.
21. Title abstracters—regulation, 66-2104, 66-2106.
22. Veterinary medicine—regulation of practice, 66-2203, 66-2204, 66-2209 to 66-2209.2.
23. Engineers and land surveyors, 66-2333.
24. Plumbers, 66-2402, 66-2403, 66-2405, 66-2407.
25. Physical Therapists Practice Act, 66-2503.
26. Water Well Contractor's License Act, 66-2604 to 66-2606, 66-2615.
27. Morticians and funeral directors, 66-2701 to 66-2717.
28. Electrical safety law, 66-2801 to 66-2820.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

Section 66-108. Fees payable by applicants for examination—disposition of fees.
66-109. Compensation of members of board—disposition and use of funds—annual report.
66-114. Scale of compensation for architects on public buildings—insurance coverage.
66-115. Payment for extra services—time schedule for payments.

66-108. (3236) **Fees payable by applicants for examination—disposition of fees.** Applicants for examination shall pay in advance to the secretary of said board a fee of fifteen dollars. Any applicant failing to pass the said examination shall be entitled to a second examination within one year without fee.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the earmarked revenue fund for the use of the board of architectural examiners.

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921; amd. Sec. 140, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "which fee shall defray the entire expense of such candidate, before the aforesaid board of architectural examiners" from the end of the first sentence of the first paragraph; and substituted "earmarked revenue fund for the use of the board of architectural examiners" for "architectural board fund as herein provided" at the end of the section.

66-109. (3237) **Compensation of members of board—disposition and use of funds—annual report.** Each member of the examining board is hereby allowed the sum of five dollars ($5.00) per day and mileage at the rate of ten cents (10¢) per mile while in the discharge of his actual duties.

And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of architectural examiners.

The members of the said board shall report annually to the governor on the first Monday of January of each year, which report must show all the transactions of the board, giving the number and names of all applicants, and the number and names of those rejected, and those to whom certificates have been issued, the expenses, the fees and mileage paid, and the amount of money received.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921; amd. Sec. 141, Ch. 147, L. 1963.

Amendment

The 1963 amendment made numerous changes in this section. For section prior to amendment, see parent volume.

66-114. Scale of compensation for architects on public buildings—insurance coverage. No payment for professional services of any architect or architects, relating to the planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district in the state, shall hereafter be made at any greater rate of compensation for such professional services than hereinafter set forth; and no contract for professional services of any architect or architects, relating to the planning or construction of any such public buildings, works or improvements, shall hereafter be entered into by any board, department or agency of the state of Montana, or of any county, city or school district in the state which shall provide for payment of any greater rate of compensation for such professional services than the following percentages of actual cost of construction of such buildings, works or improvements, to wit:

"A" Rate—Specialized Types: Structures of individual design and detail requiring special skill and prolonged study such as banks, clinics, club buildings, hospitals, libraries, memorials, monuments, museums, and residences:

	Fee	Construction Cost
	8.00% of first	$ 50,000
Plus	7.75% of next	50,000
Plus	7.50% of next	100,000
Plus	7.00% of next	300,000
Plus	6.00% of next	500,000
Plus	5.00% of all additional	

"B" Rate—Conventional Types: Structures of conventional character such as apartments, administrative buildings, bus and railway depots, churches, gymnasiums, dormitories, fire stations, nurses' homes, office buildings, restaurants, schools, shopping centers, stores and shops and theaters:

	Fee	Construction Cost
	7.50% of first	$ 50,000
Plus	7.25% of next	50,000
Plus	7.00% of next	100,000
Plus	6.50% of next	300,000
Plus	5.50% of next	500,000
Plus	4.50% of all additional	

"C" Rate—Utilitarian Types: Structures of simplest utilitarian character such as airport hangars, armories, field houses, garages, shop maintenance buildings, multiple housing projects, stadiums, warehouses:

	Fee	Construction Cost
	6.50% of first	$ 50,000
Plus	6.25% of next	50,000
Plus	6.00% of next	100,000
Plus	5.50% of next	300,000
Plus	4.50% of next	500,000
Plus	3.50% of all additional	

All architectural plans and specifications for such public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

All architects shall have an adequate errors and omissions insurance policy when performing any supervisory acts relating to the construction of any public buildings, works or improvements of the state of Montana or any agency thereof, or of any county, city or school district of the state and such insurance shall be in force for three (3) years after the completion of the public buildings, works, or improvements.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965.

Amendment

The 1965 amendment added the final paragraph.

66-115. Payment for extra services—time schedule for payments. Said rate of compensation shall constitute full payment for all services and functions whatsoever of the contracting architect or architects and his and their employees and subcontractors including, but not limited to, consultation, preliminary studies, sketches, and estimates of costs, preparation of working drawings and working plans and specifications, preparation of advertisement of bids, bid forms, certificates of estimates, and inspection and supervision of construction; provided, however, that if the architect is caused extra drafting or other expense due to changes ordered by the owner, or due to the delinquency or insolvency of the owner or contractor, or as a result of damage by fire, he shall be equitably paid for such expense and the services involved.

Three per cent (3%) of the cost of construction shall be added to the maximum rate of compensation, as above set forth for alterations to existing buildings. All compensation payable under this act may be distributed and paid in accordance with the following schedule, to wit:

20% upon completion of studies and preliminary drawings
55% upon completion of working drawings and specifications
15% during construction, based on contract payment
10% when construction has been completed and accepted by the owner or the duly authorized agent of such owner;

provided, the architect shall be paid at said times at the applicable rate of compensation for any work which is requested by the owner or its duly authorized agent and within the scope of his authority to the extent authorized but abandoned by such owner in whole or in part.

History: En. Sec. 3, Ch. 190, L. 1953; amd. Sec. 2, Ch. 167, L. 1961; amd. Sec. 1, Ch. 209, L. 1965.

Amendment

The 1965 amendment changed the schedule in the second paragraph by reducing the amount payable during construction from 25% to 15% and by adding the provision for payment of 10% on completion and acceptance of construction.

CHAPTER 2—AUCTIONEERS AND AUCTION SALES

Section 66-202. Auctioneer's authority from the bidder.
66-203.1. Reciprocal privileges to nonresident auctioneers.
66-204. The bond—sureties, approval and filing.

66-202. (7977) Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in section 66-219. [Effective January 1, 1965.]

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R. C. M. 1921; amd. Sec. 11-145, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2363. Field Civ. C. Sec. 1265.

Amendment

The 1963 amendment substituted the reference to section 66-219 at the end of the section for "the chapters on sale."

66-203.1. Reciprocal privileges to nonresident auctioneers. The citizenship requirements required by the state of Montana for an auctioneer are hereby waived for the citizens of any state or states to the same extent that the home state of the applicant waives such citizenship requirements for the citizens of the state of Montana.

History: En. Sec. 1, Ch. 173, L. 1963.

Title of Act

An act to provide for reciprocal agreements with other states waiving citizenship requirements for auctioneers and providing for the place of posting bond by nonresident auctioneers.

66-204. (4148) The bond—sureties, approval and filing. The bond must be conditioned to be paid to the state of Montana, with one or more sureties, in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office; or if the auctioneer is not a resident of Montana, said bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R. C. M. 1921; amd. Sec. 2, Ch. 173, L. 1963. Cal. Pol. C. Sec. 3285.

Amendment

The 1963 amendment added the clause following the semicolon and pertaining to nonresident auctioneers.

Repealing Clause

Section 3 of Ch. 173, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—BARBERS AND BARBER SHOPS

Section 66-407. Officers, official seal.
66-408. Compensation, funds and reports.

66-407. Officers, official seal. The board shall elect a president, secretary and treasurer. It shall adopt and use a common seal for the authentication of its orders and records. The secretary shall keep a record of all proceedings of the board. At least once a month all moneys collected by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of barber examiners.

History: En. Sec. 7, Ch. 127, L. 1929; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted the third sentence for a clause appearing at the end of the second sentence and reading, "and shall at least once a month turn over to the treasurer of the board all moneys collected."

The 1965 amendment deleted a final sentence reading, "The secretary and treasurer shall each furnish a surety bond in the sum of five thousand dollars ($5,000.00), for the faithful performance of his duties; said bond to be filed with the secretary of state and shall be approved by the governor."

66-408. (3228.26) **Compensation, funds and reports.** Each member of the board shall receive a compensation of fifteen dollars ($15.00) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board.

The board shall make an annual report of its proceedings and moneys expended by it to the governor of the state for the year ending on the 31st day of December preceding the making of said report.

History: En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a former second paragraph which read: "The board of barber examiners shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary."

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section 66-512. Renewal of license.
66-513. Disposition of fees—receipts and disbursements—per diem and mileage.
66-514. Dismissal of members of board.

66-512. (3149) **Renewal of license.** One of the purposes of this act is to require each licensee to keep abreast of and informed about the developments and advances in the science of chiropractic, and, therefore, each license shall expire on the first day of September in each year, and shall be renewed then or thereafter, by the board, upon payment of a renewal fee of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00) as set by the state board of chiropractic examiners, and the presentation of evidence satisfactory to said board that the licensee, in the year preceding the application for renewal, attended an educational program for chiropractors conducted by any school of chiropractic licensed to operate in the state of its location, or an educational

program conducted by the state association of licensed chiropractors of any state, or an educational program approved by the state board of chiropractic examiners; provided, that the board may grant renewals, but not consecutive renewals, upon a showing satisfactory to said board that attendance upon said educational programs was unavoidably prevented, provided that new licensees during the six (6) months preceding said September first, by examination, shall be granted renewal licenses without attending said educational programs, provided, that a failure to renew a license shall not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license; provided, that nothing herein shall prevent a renewal of said license if in said preceding year for any reason, at least one of the said educational programs is not conducted in the state of Montana.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R. C. M. 1921; amd. Sec. 2, Ch. 129, L. 1933; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965.

Amendment

The 1965 amendment increased the maximum renewal fee from $15 to $25 and substituted "an educational program for chiropractors conducted by any school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of any state, or an educational program approved by the state board of chiropractic examiners" immediately before the first proviso for "at least one of the two-day educational programs as conducted by the Montana chiropractic association."

66-513. (3150) Disposition of fees—receipts and disbursements—per diem and mileage. All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the said state treasurer shall place said money so received in the earmarked revenue fund for the use of the state board of chiropractic examiners.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year he shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of twenty-five dollars ($25.00) for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of ten cents (10¢) per mile for each mile necessarily traveled in going to and from any meeting of said board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R. C. M. 1921; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of chiropractic examiners" for "a special fund of the state board of chiropractic examiners and shall pay the same out in warrants drawn by the auditor of the state thereof, upon vouchers issued and signed by the president and the secretary-treasurer of said board" at the end of the first sentence of the first paragraph; deleted from the first paragraph a second sentence which read: "Said money so received and placed in said fund may be used by the state board of chiropractic examiners in defraying their expenses in carrying

out the provisions of this act"; and deleted a former fourth paragraph which read: "Such per diem and mileage and such other incidental expenses necessarily connected with said board shall be paid out of the fund of the state board of chiropractic examiners, and not otherwise."

66-514. (3151) **Dismissal of members of board.** Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed chiropractor practicing in this state, who shall be a graduate of a different school than those represented on the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3151, R. C. M. 1921; amd. Sec. 24, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a first sentence reading, "The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper."

CHAPTER 6—CHIROPODY—REGULATION OF PRACTICE

Section 66-603. Chiropody examiners—examinations—qualifications—schools—fees—nonresident practitioners.
66-607. Disposal of moneys collected.
66-608. Compensation of examiners—expenses.

66-603. (3154.3) **Chiropody examiners—examinations—qualifications—schools—fees—nonresident practitioners.** (1). * * * [Same as parent volume.]

(2) Examinations shall be held semiannually at such places and time as the state board of chiropody medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiropody in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiropody. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of being at least twenty-one (21) years of age, of good moral character, of having attained high school graduation or its equivalent and of having had at least two years of instruction in an accredited school of chiropody recognized as being in good standing by the Montana board of chiropody medical examiners, but after June 1st, 1941, no school of chiropody shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of chiropody. All chiropodists, actively engaged in the practice of chiropody one (1) or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of chiropody medical examiners be entitled to a license without examination. A license without written examination may be issued to chiropodists of other states maintaining equal statutory requirements for the practice of chiropody and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars ($50.00) to the secretary of the board of medical examiners.

History: En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the secretary of the board of medical examiners" for "board of medical examiners fund" at the end of the section.

66-607. (3154.7) **Disposal of moneys collected.** All fees and licenses shall be paid to and collected by the secretary of the state board of medical examiners, who shall at least quarterly each year pay the same to the state treasurer, and the state treasurer shall receive and accept such moneys and credit same to the earmarked revenue fund for the use of the state board of medical examiners.

History: En. Sec. 7, Ch. 2, L. 1923; amd. Sec. 130, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of medical examiners" for "a special fund to be known and designated as board of medical examiners fund and such fund shall not be used or expended for any purpose other than as provided for in section 66-1009" at the end of the section.

66-608. (3154.8) **Compensation of examiners—expenses.** Each member of the board of examiners, except the secretary and the physician members who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services the sum of five dollars ($5.00) per diem and necessary traveling and incidental expenses, while the secretary shall receive his necessary expenses for services which cannot be performed at the capitol. All printing, postage and other contingent expenses, necessarily incurred, shall be paid by the state board of medical examiners in the same manner as other expenses of the state board of medical examiners.

History: En. Sec. 8, Ch. 2, L. 1923; amd. Sec. 132, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "out of the funds created by the payment of fees by applicants for licenses" following "receive for his services" in the first sentence; substituted "capitol" for "capital" at the end of the first sentence; and substituted "by the state board of medical examiners" in the third sentence for "from said funds, and all expenses shall be itemized, verified, audited, upon presentation by the state board of medical examiners, and a warrant drawn therefor by the state auditor on the board of medical examiners fund."

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section 66-809. Compensation of members of board—deposit of receipts in state treasury.
66-815. Fees.

66-809. (3228.9) **Compensation of members of board—deposit of receipts in state treasury.** Each member of the board shall receive, as compensation for his or her services, the sum of ten dollars ($10.00) for each day's actual attendance at board meetings, not to exceed three consecutive days, and each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. All receipts of the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state examining

board of cosmetology. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance of board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners.

History: En. Sec. 9, Ch. 104, L. 1929; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the second sentence for a sentence reading, "All such compensation and necessary expenses shall be paid by the board out of the funds received by it and no part shall be paid by the state"; and deleted from the end of the section a proviso reading, "provided, however, that no payments shall be made by the board except upon a verified claim filed with the board and approved by the majority thereof, and by warrants signed by the president and secretary-treasurer of the board."

66-810. (3228.10) **Repealed.**

Repeal

This section (Sec. 10, Ch. 104, L. 1929; Sec. 9, Ch. 222, L. 1939), relating to the bond of the secretary-treasurer of the state examining board of cosmetology, was repealed by Sec. 51, Ch. 177, Laws 1965.

66-815. (3228.15) **Fees.** Each applicant for examination to practice or teach shall pay, at the time of such application a fee of ten ($10.00) dollars. Each person practicing cosmetology as an operator shall pay a fee of three ($3.00) dollars for the issuance of a license, and the further fee of three ($3.00) dollars annually for each renewal thereof. Each applicant for a manager-operator license shall pay a fee of five ($5.00) dollars, for the issuance of such a license and the further sum of five ($5.00) dollars annually for each renewal thereof. A manager-operator or teacher of cosmetology who is retired or no longer active in any capacity in a cosmetological establishment or beauty school may obtain an inactive license upon the payment of an annual fee of three ($3.00) dollars. Every person, firm, copartnership or corporation originally opening a cosmetological establishment shall pay the sum of five ($5.00) dollars for the issuance of the original license. The sum of three ($3.00) dollars annually shall be paid by each existing cosmetological establishment and for each renewal of cosmetological establishment license. Each person teaching cosmetology shall pay a fee of five ($5.00) dollars, for the issuance of a license, and the further sum of five ($5.00) dollars annually for each renewal thereof. Every person, firm, copartnership, or corporation, owning, operating or conducting a school of cosmetology shall pay the sum of twenty-five ($25.00) dollars for a certificate of registration therefor, and pay a further sum of twenty-five ($25.00) dollars annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of three ($3.00) dollars. Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five ($25.00) dollars. Such license fees shall be paid annually in advance to the secretary of the board. No other or additional license or fee shall be imposed by any municipal corporation or any other political subdivision of the state of Montana for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963.

Amendment

The 1963 amendment inserted the fourth, fifth, and sixth sentences.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

Section 66-904. Meetings—notice—quorum—funds—duties—accounts.
66-906. Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.
66-909. Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation.
66-919. Practicing dentistry without certificate, penalty for—disposition of fines.
66-925. Citation of act—regulatory board.

66-904. (3115.4) **Meetings — notice — quorum — funds — duties — accounts.** The board shall meet at least once in each year or oftener at any point in the state of Montana at the call of the president and the secretary-treasurer. Five days' notice must be given by the secretary-treasurer to all board members of the time and place of the meeting of said board. The regular annual meeting of the board shall be held on the second Monday in July of each year. Three members of said board shall constitute a quorum for the transaction of business and its proceedings shall be open to public inspection in all cases of public interest. All moneys received by the board and/or its officers for the board, shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners.

The secretary-treasurer shall keep a complete record of all meetings and proceedings of which records the secretary-treasurer shall be custodian, and he shall keep a true and complete account of all moneys received and disbursements made by the board and by him as such officer. The secretary-treasurer shall, not later than the fifteenth day of January of each year, cause to be prepared, a full, true and accurate account of all moneys received, and of all expenditures made, including per diem and expenses of each board member, during the last preceding calendar year. A copy of such account shall be delivered to the governor of Montana and like copies shall be mailed to every registered dentist in the state of Montana.

History: En. Sec. 4, Ch. 48, L. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners" for "paid to the secretary-treasurer of the board, who shall be the custodian of the board's receipts and funds, and all disbursements shall be made by him in accordance with this act, and the directors of the board" at the end of the first paragraph.

The 1965 amendment deleted "shall give bond in such amount as the board may from time to time require, which bond shall be approved by the board, and he" after "The secretary-treasurer" at the beginning of the second paragraph.

66-906. (3115.6) **Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.** (1) The certificate in this act provided for shall entitle the holder thereof to practice dentistry in any county in the state of Montana, provided such certificate shall first be filed for registration and registered in the office of the county recorder of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this state unless such certificate shall have been first registered in the office of the recorder of such county as herein provided; provided further that any such holder of a certificate may practice in more than one or in any number of counties in this state on having such certificate registered in each [of] such counties in which such holder desires to practice. Said board of dental examiners shall, upon satisfactory proof of the loss of any such certificate issued under the provisions of this act, issue a duplicate certificate in place thereof, and a fee of five dollars ($5.00) shall be charged for issuing such certificate. Any person failing to pass his first examination before such board, may demand a second examination at any subsequent meeting of said board held for the purpose of examining candidates, and no fee shall be charged for any subsequent examination.

(2). * * * [Same as parent volume.]

(3) In addition to the license fee required of applicants, every licensed dentist practicing within the state of Montana shall pay in each and every year to the secretary-treasurer of the board, the sum of seven dollars ($7.00), as a license fee for such year. In the event the payment of the annual license fee is not made prior to the first day of May by either practicing dentists or dentists not engaged in the active practice within the state of Montana, and [an] additional penalty of three dollars ($3.00) shall be charged for late payment which shall be in addition to any other fee requirements of this section.

(4). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 48, L. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from the end of the first sentence of subsection (3) a proviso which read: "provided, however, that the board shall have the power to reduce the annual license fee of seven dollars ($7.00) to the sum of one dollar ($1.00) or more (but not in excess of seven dollars ($7.00) per year when the amount of the balance of cash in the hands of the secretary-treasurer reaches the sum of eight thousand dollars ($8,000.00), it being the intent of this act that said fund shall be maintained at an approximate level of eight thousand dollars ($8,000.00)"; deleted from subsection (3) a second sentence which read, "Notice of such change in the amount of dues shall be given to each dentist registered in the state by the secretary-treasurer"; and made minor changes in phraseology.

66-909. (3115.9) **Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation.** The sum of fifteen dollars ($15.00) per day for each day actually engaged in the duties of his office and the amount of the actual railroad and Pullman fares to and from

his place of residence to the place where the meetings of said board are held, shall be paid to each member of said board attending such meetings. Meetings held for the purpose of examining candidates for license to practice dentistry in Montana shall in no case exceed six days. Said board may, if by it deemed advisable, with the consent of the county attorney of any county, employ and compensate special counsel to assist in the prosecution in the courts of such county and in the supreme court of this state, of any offense alleged to have been committed under the provisions of this act in such county. The secretary-treasurer of the board shall receive such reasonable compensation for his services as said board may fix.

History: En. Sec. 9, Ch. 48, L. 1935; amd. Sec. 149, Ch. 147, L. 1963.

Amendment

The 1963 amendment at the beginning of the section deleted the words "Out of the funds coming into the possession of the board from the fees and dues charged as hereinabove provided"; deleted the words "out of said fund" which followed the words "employ and compensate" in the third sentence; deleted a fourth sentence which read "Such expenses shall be paid from the fees received by the board under the provisions of this act"; and deleted from the end of the section two sentences which read "All moneys received from any source in excess of expenses and salaries above provided for, shall be held by the secretary-treasurer of said board as a special fund for meeting the expenses of said board, the proper administration of this act and for such educational purposes as may be deemed wise by said board. All moneys on hand shall be invested or deposited under the direction of the board, and all moneys received by the board under this act shall be and remain subject to its exclusive custody and control."

66-919. (3115.19) **Practicing dentistry without certificate, penalty for —disposition of fines.** Any person who, as principal, agent, employer, employee or assistant, shall practice dentistry in any manner whatever, or who shall do any act of dentistry, without having first secured his or her certificate to practice dentistry from the state board of dental examiners of the state of Montana entitling him or her to so practice in this state, shall be guilty of a misdemeanor, and upon conviction in a district court shall be fined in any sum not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) or be confined for any period not exceeding six (6) months in the county jail, for each and every offense. All fines imposed and collected under this act shall be paid into the treasury of the county in which such suits, actions or proceedings shall have been commenced. All moneys thus paid into the treasury over and above the amount necessary to reimburse the county for any expense incurred by said county, in any suit, action or proceeding brought under the provisions of this act, shall be paid, before the first day of January of each year, to the treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental examiners.

History: En. Sec. 19, Ch. 48, L. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental examiners" at the end of the section for "secretary-treasurer of the state board of dental examiners of the state of Montana, and become and be a part of the fund to be used by the said state board of dental examiners in the enforcement of the provisions of this act, and shall be used for no other purpose."

66-925. (3115.25) **Citation of act—regulatory board.** This act may be known and cited as the "Montana Dentistry Regulation Act."

History: En. Sec. 27, Ch. 48, L. 1935; amd. Sec. 151, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "and said state board of dental examiners of the state of Montana is hereby declared to be a regulatory board within the meaning of the proviso of section 79-306" at the end of the section.

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

Section 66-1008. Fees for examination for admittance—annual license.
66-1009. Compensation and expenses allowed board member—employment of clerks and counsel—secretary's compensation.

66-1001. (3116) **Qualifications, appointment, term of medical examiners.**

Cross-Reference

Exemption from liability of physicians rendering aid at scene of emergency, sec. 17-410.

66-1007. (3122) **Practicing medicine without certificate—penalties.**

Construction

The offenses listed in paragraph (2) of this section are in the disjunctive rather than the conjunctive. State v. Moore, 141 M 86, 375 P 2d 218, 220.

Physiotherapy

An alleged physiotherapist was guilty of violating this section where he attempted to remove moles from patient's body by the use of a surgical diathermy machine. State v. Moore, 141 M 86, 375 P 2d 218, 221.

66-1008. (3123) **Fees for examination for admittance—annual license.** (1). * * * [Same as parent volume.]

(2) In addition to the respective license fees required of applicants, every licensed physician and surgeon practicing within the state of Montana shall pay each and every year to the secretary of the board, an annual registration fee not to exceed the sum of ten dollars ($10.00), as may be prescribed by the board. The moneys so received from the foregoing and every other source, shall be turned over, by said secretary, to the state treasurer, and shall be by the state treasurer deposited in the earmarked revenue fund for the use of the board of medical examiners. In the event any person licensed to practice medicine absents himself from the state for a period of one or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of three dollars ($3.00) each year, or, at the discretion of the board, he may be reinstated upon the payment of a fee of three dollars ($3.00) for each year's absence.

(3). * * * [Same as parent volume.]

History: Ap. p. Sec. 607, Pol. C. 1895; amd. Sec. 1, Ch. 114, L. 1907; Sec. 1592, Rev. C. 1907; re-en. Sec. 3123, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927; amd. Sec. 4, Ch. 132, L. 1943; amd. Sec. 4, Ch. 29, L. 1961; amd. Sec. 128, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the board of medical examiners" for "board of medical examiners fund as provided by law" at the end of the second sentence of subsection (2).

66-1009. (3124) **Compensation and expenses allowed board member—employment of clerks and counsel—secretary's compensation.** Each member of the board is hereby allowed the sum of twenty dollars ($20.00)

per day and mileage while in the active and necessary discharge of his duties as a member of said board. The rate of mileage and attendance of witnesses before said board shall be the same as is now allowed in justice of the peace courts. The board must report annually on the first Monday of November to the governor, which report must show all the tranactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and those rejected, giving the reasons therefor, the amount of money received, the expenses, the fees and mileage paid, and by whom received. The board may employ such clerical help and legal counsel as may be necessary to carry out the terms and provisions of this act. The secretary of the board shall receive such reasonable compensation for his services as may be fixed by said board.

History: En. Sec. 608, Pol. C. 1895; re-en. Sec. 1593, Rev. C. 1907; re-en. Sec. 3124, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927; amd. Sec. 5, Ch. 132, L. 1943; amd. Sec. 5, Ch. 29, L. 1961; amd. Sec. 129, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted former second and third sentences reading, "There is hereby established a fund to be known as the board of medical examiners fund. All moneys in such fund shall only be paid out by warrant drawn on said fund after an order therefor drawn by the secretary, and countersigned by the president, of said board"; and deleted a former next to last sentence reading, "Such clerical help and counsel must be compensated only out of the said fund as fixed by the board."

CHAPTER 12—NURSING—REGULATION OF PRACTICE

Section 66-1228. License—by examination—by endorsement without examination—license fees.
66-1234. Fee.
66-1236. Renewal of license.
66-1237. Disposition of fees.

66-1228. License—by examination—by endorsement without examination—license fees. (1). * * * [Same as parent volume.]

(2) By endorsement without examination. (a) The board, acting under the professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty-five dollars ($25.00) at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars ($5.00), to be retained by the board.

(b). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee for license by endorsement, as set forth in paragraph (2) (a), from $20 to $25.

66-1234. Fee. The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of twenty-five dollars ($25.00) to the board at the time the application is submitted, which fee shall be

returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars ($5.00) to be retained by the board.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee from $15 to $25; and made a minor change in phraseology.

66-1236. Renewal of license. The license of every person licensed under the provisions of the act, either as a registered nurse, or a licensed practical nurse, must be annually renewed, except as hereinafter provided. On or before December first of each year, the board shall mail an application form for renewal of license to every person to whom a license was issued or renewed during such year. The applicant shall carefully complete and subscribe the application form and return it to the board with a renewal fee of five dollars ($5.00) before January first, next. Upon receipt of the application and fee the board shall verify the accuracy of the application against its record, and from such other sources as it deems reliable, and issue to the applicant a certificate of renewal for the current year beginning January first and expiring December thirty-first, following. Such certificate of renewal shall render the holder thereof a legal practitioner of nursing for the period stated in the certificate of renewal.

Any licensee who allows her license to lapse by failing to renew the license as provided above may be reinstated by the board upon satisfactory explanation for such a failure to renew license and on payment of the current renewal fee prescribed by the board.

Any person practicing nursing during any time following the date her license has expired by lapse of time shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this act.

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee specified in the third sentence of the first paragraph from $2.00 to $5.00.

66-1237. Disposition of fees. All fees received by the Montana state board of nursing, and all fines collected under this act shall be paid over by the executive secretary to the state treasurer for the credit of the earmarked revenue fund for the use of the state board of nursing.

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the former first three sentences of the first paragraph; substituted "the earmarked revenue fund for the use of the state board of nursing" at the end of the paragraph for "said fund, as required by law"; and deleted the former second and third paragraphs. For text of deleted provisions, see parent volume.

CHAPTER 13—OPTOMETRY—REGULATION

Section 66-1307. Renewal of registration—revocation—fees.
66-1311. Compensation of examiners—report.
66-1314. Penalty for violations.
66-1315. Prosecution of violations—counsel for board.

66-1307. (3161) **Renewal of registration—revocation—fees.** Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of twenty dollars ($20.00) in return for which a renewal of registration shall be issued. The board may present to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety (90) days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars ($25.00).

History: En. Ch. 138, L. 1907; re-en. Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "The board may present" for "The board may use not to exceed ten dollars ($10.00) from each renewal fee for the purpose of presenting" at the beginning of the second sentence.

66-1311. (3165) **Compensation of examiners—report.** Each member of the board may receive as compensation the sum of twenty-five dollars ($25.00) and necessary expenses for each day actually engaged in the duties of his office. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry. The secretary of said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act.

History: En. Ch. 138, L. 1907; re-en. Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "Each member of the board" at the beginning of the section for "Out of the funds coming into the possession of said board, each member thereof"; and substituted the second sentence for a sentence and clauses reading, "Such sums shall be paid from the fees received by said board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said expenses, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and."

66-1314. (3167) **Penalty for violations.** Any person who shall violate any of the provisions of this act or the rules and regulations of the state board of examiners shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars

($200.00) and not more than five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both fine and imprisonment as the court may determine. All fines thus received shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry.

History: En. Ch. 138, L. 1907; re-en. Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R. C. M. 1921; amd. Sec. 8, Ch. 171, L. 1925; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry" for "paid into the treasury of the board" at the end of the section.

66-1315. (3168) **Prosecution of violations—counsel for board.** It is the duty of a county attorney of a county wherein a violation under this act is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; re-en. Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R. C. M. 1921; amd. Sec. 1, Ch. 204, L. 1965.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

Section 66-1405. Subjects of examination—appeal.
66-1410. Compensation of board—report to governor.

66-1405. (3129) **Subjects of examination—appeal.** (1) and (2). * * * [Same as parent volume.]

(3) After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of said board, attested by the seal thereof. The fee for such examination and license shall be twenty dollars ($20.00).

History: En. Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R. C. M. 1921; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "For the support and maintenance of said board" at the beginning of the second sentence of subsection (3); and deleted the words "which shall be paid in advance to the secretary of said board to defray the expenses thereof" at the end of the second sentence of subsection (3).

66-1410. (3134) **Compensation of board—report to governor.** Each of the members of said board may receive as compensation the sum of five dollars ($5.00) for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. The fees coming into said board shall be deposited into the state treasury to the credit of the earmarked revenue fund for the use of the state board of osteopathic examiners. Said board shall make an annual report of its proceedings to the governor of the state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the governor on or before the fifteenth day of January of each year.

History: En. Sec. 10, p. 51, L. 1901; re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R. C. M. 1921; amd. Sec. 146, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "Out of the funds coming into the possession of said board" at the beginning of the section; and substituted the second sentence for sentences reading, "No part of the compensation or other expenses of said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon a warrant of the president and secretary thereof in payment of the compensation and expenses of said board in carrying out the provisions of this act."

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section 66-1505. Salaries and expenses of officers of board.
66-1527. Disposition of fees and fines.

66-1505. (3175) **Salaries and expenses of officers of board.** Each member of the board shall receive five dollars ($5.00) a day for his actual services as such, and his necessary expenses in attending meetings. The secretary shall receive a salary to be fixed by the board, and all expenses necessarily incurred by him in the performance of his duties.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R. C. M. 1921; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a final sentence reading, "The secretary shall give bond in such amount as the board may from time to time require, which bond shall be conditioned for the faithful performance of his duties and shall be approved by the board."

66-1508. Store license—certified pharmacy license, etc.

Sale of Unlabeled Drugs

A pharmacy license may be suspended for a single sale of unlabeled drugs in violation of section 66-1523. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

66-1509. Judicial review of acts of board.

Jurisdiction

On review of an order of suspension of pharmacy license by the state board of pharmacy the district court has jurisdiction to annul the action of the board if the record before the court indicates that the board acted capriciously or arbitrarily, or without jurisdiction or authority. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

Remand of Cause

On appeal to the district court by druggist from an order of suspension of pharmacy license by the state board of pharmacy, evidence of harshness and excessiveness of penalty was sufficient to require court to remand the cause to the board with instruction to place such evidence in the record for further consideration as it deemed proper. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

Scope of Review

Additional testimony may not be received by the district court in reviewing an order of the board of pharmacy. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

The word "review" as used in this section means a judicial re-examination as of the proceedings of a lower court by a higher court. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

66-1523. Wrongful labeling.

Suspension of License

A single sale of unlabeled drugs in violation of this section is ground for suspension of pharmacy license under section 66-1508. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

66-1527. (3202.12) **Disposition of fees and fines.** All fines paid under the provisions of this act and all fees collected by or under the authority of the state board of pharmacy of the state of Montana for registration and licenses issued under this act shall be transmitted to the state board of pharmacy and by it deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state board of pharmacy.

History: En. Sec. 6, Ch. 104, L. 1931; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

Section 66-1812. Disposition of funds—expenses of board, how paid.

66-1812. (3241.12) **Disposition of funds—expenses of board, how paid.** All funds received under this act, or under or by virtue of prior accountancy laws shall be received by the university and paid into the general fund.

The members of the board of examiners in accountancy shall receive their actual traveling and hotel expenses incurred while engaged in the performance of their duties, as imposed upon them by this act, but shall receive no other compensation. Such expenses, together with the expense of preparing and issuing certificates, publishing notices of examinations, and all other expenses arising from the administration of this act shall be paid by the university.

History: En. Sec. 12, Ch. 46, L. 1933; amd. Sec. 233, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the general fund" for "the board of accountancy fund" at the end of the first paragraph; deleted "from the fees received from applicants" at the end of the second sentence in the second paragraph; and deleted a final sentence reading, "In no event shall any expenses arising from the administration of this act become a charge against the funds of the university or the state of Montana."

CHAPTER 19—REAL ESTATE LICENSE ACT

Section 66-1924. Title—license required.
66-1925. Definitions.
66-1926. Exempted classes.
66-1927. Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.
66-1928. Disposition of excess over $7,500.00.
66-1929. Licenses—applicants for licenses.
66-1930. Written examination—contents—time and place—exemptions.
66-1931. License—issuance—suspension—revocation.
66-1932. License—delivery—display—pocket card.
66-1933. Bond of brokers and salesman.
66-1934. Fees—when due.
66-1935. Requirements for office—employment of salesmen—issuance and display of license.
66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.
66-1937. Grounds for refusal—suspension or revocation of license.
66-1938. Hearings—procedures.
66-1939. Appeal to court—supersedeas—bond.
66-1940. Penalties—legal actions.

66-1941. Action for compensation.
66-1942. Members of company—license required.
66-1943. Real estate meetings and clinics open to all licensees.
66-1944. Attorney for commission.
66-1945. Publication of directory.
66-1946. No repeal of section 94-1822.

66-1901 to 66-1923. (4056 to 4078) Repealed.

Repeal

These sections (Secs. 1 to 23, Ch. 195, L. 1921; Secs. 1, 2, Ch. 40, L. 1925; Sec. 1, Ch. 7, L. 1933; Sec. 1, Ch. 150, L. 1953; Sec. 1, Ch. 129, L. 1957; Sec. 1, Ch. 130, L. 1957; Sec. 1, Ch. 131, L. 1957; Sec. 1, Ch. 132, L. 1957), relating to real estate brokers, were repealed by Sec. 24, Ch. 250, Laws 1963.

66-1924. Title—license required. This act shall be known and may be cited as the "Real Estate License Act of 1963." From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, as provided in this act.

History: En. Sec. 1, Ch. 250, L. 1963.

Title of Act

An act providing for the application, qualifications, bonding, licensing, supervision and regulation of real estate brokers and real estate salesmen; providing for the collection and disposition of fees; providing for a state real estate commission and defining its powers and duties; providing reciprocity of licenses, examination and consent to suit by nonresidents; providing grounds for denial, revocation or suspension of licenses; providing hearing procedure; providing for appeals from decisions of the commission and district court; prescribing fees and their disposal; providing penalties for the violation of this act or of any rule or regulation issued by the commission; containing a severability clause; repealing sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957, and Chapter 132, Laws of 1957; providing section 94-1822 of the Revised Codes of Montana of 1947 shall not be amended, modified, or repealed by this act; and containing an effective date for this act; and repealing all acts and parts of acts in conflict herewith.

66-1925. Definitions. As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended:

(a) The term "real estate" shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(b) The term "broker" shall include any person or organization who for another, or for a fee, commission or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any person or organization employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing

or other disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.

(c) The term "salesman" shall include any person who, for a salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate.

(d) The term "person" shall mean and include individuals, partnerships, associations and corporations, foreign and domestic.

(e) The term "he" shall mean and include "she" and "it." The term "his" shall mean and include "her" and "its."

History: En. Sec. 2, Ch. 250, L. 1963.

66-1926. Exempted classes. A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not (1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself, or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor, or (2) apply to any person acting as attorney in fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting or leasing of any real estate, or (3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law, or (4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter, or (5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust or will, or an auctioneer, employed by a receiver, trustee in bankruptcy, administrator, executor or trustee, to aid and assist in conducting a public sale held by any such officer, or (6) apply to public officials in the conduct of their official duties, or (7) apply to any person, partnership, association or corporation, foreign and domestic, performing any act with respect to prospecting, leasing, drilling or operating land for hydrocarbons and hard minerals, or disposing of any hydrocarbons, hard minerals or mining rights therein, whether upon a royalty basis or otherwise.

History: En. Sec. 3, Ch. 250, L. 1963.

66-1927. Real estate commission—members—districts—powers and duties — employees — compensation — disposition of fees. (a) There is hereby created the Montana real estate commission, hereinafter referred to as the "commission," to consist of the commissioner of agriculture, who shall act as chairman of the commission, and four members, each of whom shall be a resident of this state, at least two of whom shall be active and licensed as real estate brokers and who have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years prior to the date of appointments. The four members of the commission, other than the chairman, shall be appointed by the governor as follows:

Not more than two members shall be from the same congressional district, with no more than one eligible real estate broker residing in the same congressional district, and not more than three persons on the commission, including the chairman, shall be of the same political party. Upon the initial appointments, the first congressional district's two members shall be appointed for one year and the other for three years, and the second congressional district's members shall be appointed for two years and four years, respectively. Thereafter the term of each member shall be for four (4) years and until their successors are appointed and qualify. In the event of a vacancy on the commission, the governor shall fill the vacancy by appointing a resident from the same district as the member whose office has become vacant, to serve as a member for the unexpired term. If a member takes up residency in a district different from the one in which he resided at the time of appointment, he automatically vacates his commission position. Upon the qualification of the members appointed, the commission shall do all things necessary and proper for carrying out the provisions of this act, and shall from time to time promulgate rules and regulations not inconsistent herewith and make necessary amendments thereto.

(b) The chairman shall cause to be kept a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all the records of the commission and shall cause to be performed such other duties as the commission upon the written request of two or more members of the commission or at such other times as the chairman may in his discretion deem necessary. The commission is authorized to employ such employees as may be necessary to properly carry out the provisions of this act, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in the office of the commissioner of agriculture at the state capitol at Helena, and all files, records and property of the commission shall at all times be and remain therein. Neither the chairman nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents ($7.50) and his actual and

necessary expenses incurred in the performance of any other duties provided for by the commission.

(d) The commission shall adopt a seal of such design as it shall prescribe. Copies of all records and papers in the office of the commission, duly certified by the chairman and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original. All records of the commission shall be open to public inspection under such reasonable rules and regulations as it shall prescribe.

(e) All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and said funds so deposited shall be apportioned as follows:

Five per cent (5%) from each examination fee and twelve and one-half per cent (12½%) from all other fees collected shall be deposited to the credit of the general fund of the state to reimburse the state for its costs in administering this act.

The balance of said fees collected by the commission shall be deposited to the credit of the earmarked revenue fund and are hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures from said funds by the commission under the provisions of this act shall be certified and approved by the chairman of the commission and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The commission shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith.

The commission shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its members, clerks, employees, and board members.

(f) The commission shall have the power and authority to promulgate rules and regulations governing and regulating its internal operation and business meetings. The commission shall also have the power and authority to promulgate rules and regulations relating to the administration of this act but not inconsistent therewith.

History: En. Sec. 4, Ch. 250, L. 1963.

66-1928. Disposition of excess over $7,500.00. All moneys, investments and credits in excess of seven thousand five hundred dollars ($7,500.00) remaining in the state treasury to the credit of the commission in the earmarked revenue fund at the close of the license year on December 31st of each year, after the payment of all expenses for that year, shall on or before the fifteenth day of the succeeding month be determined by the commission and shall be transferred from the earmarked revenue fund to the general fund to become available for general governmental purposes.

History: En. Sec. 5, Ch. 250, L. 1963.

66-1929. Licenses—applicants for licenses. (a) Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public.

(b) Each applicant for a broker's license shall be a citizen of the United States, at least twenty-one (21) years of age, and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency. Every officer of a corporation acting as a broker and every member of an association or partnership acting as a broker shall obtain a broker's license.

(c) Each applicant for a salesman's license shall be at least twenty-one (21) years of age and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

History: En. Sec. 6, Ch. 250, L. 1963.

66-1930. Written examination—contents—time and place—exemptions. (a) In addition to proof of honesty, trustworthiness and good reputation, each applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the commission. The examination shall be given at least once each six months and at such places within the state as the commission shall prescribe. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further examination until six months have passed; provided, however, that any resident of the state of Montana who was at the effective date of this act actively engaged in the real estate business as a licensed broker in this state may, upon complying with the other requirements for a broker's license, obtain a broker's license without examination if application therefor is made within ninety (90) days after the effective date of this act; and provided further that any person who has acted as a licensed salesman upon complying with the other requirements for a salesman's license may obtain a salesman's license without an examination if application is made within ninety (90) days after the effective date of this act.

History: En. Sec. 7, Ch. 250, L. 1963.

66-1931. License—issuance—suspension—revocation. The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act.

History: En. Sec. 8, Ch. 250, L. 1963.

66-1932. License—delivery—display—pocket card. The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and including, on real estate salesman's cards only, the name and address of the broker employing such real estate salesman.

History: En. Sec. 9, Ch. 250, L. 1963.

66-1933. Bond of brokers and salesman. No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars ($10,000.00), running to the state of Montana and executed by a surety company duly authorized to do business in the state of Montana. The bond shall be in a form approved by the commission and conditioned that the applicant shall conduct his business and himself in accordance with the provisions of this act. All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission.

History: En. Sec. 10, Ch. 250, L. 1963.

66-1934. Fees—when due. To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, a fee not to exceed the amount indicated below shall be charged by the commission and paid into the earmarked revenue fund for each of the following:

(a) For each examination, a fee not to exceed fifty dollars ($50.00).

(b) For each original resident broker's license issued, a fee not to exceed fifty dollars ($50.00).

(c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars ($50.00).

(d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars ($50.00).

(e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars ($50.00).

(f) For each original salesman's license issued, a fee not to exceed twenty-five dollars ($25.00).

(g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars ($25.00).

(h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars ($25.00).

(i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars ($25.00).

(j) For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

(k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

The commission shall at its first meeting prepare a schedule of fees within the limits set by this section. The commission may from time to time revise such schedule of fees within the limits herein provided; provided, however, a fee once set for any one of the items herein for which a fee is charged cannot be increased or decreased until at least one year has passed since the fee for that particular item was last increased or decreased.

All annual fees shall be due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 will automatically cancel such license, but otherwise said license will remain in full force and effect continuously from the date of issuance, unless suspended or revoked by said commission for just cause.

History: En. Sec. 11, Ch. 250, L. 1963.

66-1935. Requirements for office—employment of salesmen—issuance and display of license. (a) Each resident licensed broker shall maintain a fixed office within this state. The original license of the broker and the original license of each salesman in the employ of or under contract with such broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the commission before such removal or within ten days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall issue.

(b) A salesman shall not be employed by or under contract to more than one licensed broker nor shall he perform services for any broker other than the one designated upon the license issued to the salesman. Whenever a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon, pay the required fee, and return his license and pocket card, and a new license and pocket card shall thereupon be issued. No salesman shall directly or

indirectly work for or with a broker until he has been issued a license to work for or with that broker. Upon termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the commission for cancellation.

(c) Only one license shall be issued to any salesman to be in effect at one time.

History: En. Sec. 12, Ch. 250, L. 1963.

66-1936. **Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.** (a) It is unlawful for any licensed broker to employ or compensate directly or indirectly any person for performing any of the acts regulated by this act who is not a licensed broker or licensed salesman; provided, however, that a licensed broker may pay a commission to a licensed broker of another state so long as such nonresident broker has not conducted and does not conduct in this state any service for which a fee, compensation or commission is paid; provided, further, this subsection shall not limit the provisions of the subsection following.

(b) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state and who has been duly licensed in such other state to conduct such business in that state, may obtain a license as a broker in this state by complying with all provisions of this act; provided, however, that this section shall apply only to those brokers of other states which offer the same privileges to the licensed brokers of this state. Such nonresident licensee need not maintain a place of business within this state. The commission may license such nonresident broker without examination, provided that he files with the said commission a duly authorized or certified copy of the license issued to such nonresident for the conducting of such business in any other state, and by paying to the said commission the same license fee as is herein provided for the obtaining of a broker's license in this state. The commission may in its discretion refuse to issue a broker's license to an applicant who is not a resident of this state.

(c) Every nonresident broker shall file an irrevocable written consent that legal actions arising out of any commenced or completed transaction may be commenced against such nonresident broker in any county of this state which may be appropriate and designated by section 93-2904; and such consent shall provide that service of summons in any such action may be served upon the chairman of the commission, for and on behalf of said nonresident broker, and such service shall be held to be sufficient to give the court jurisdiction over such nonresident broker and his salesman or agent conducting any such transaction in any county. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. Any service of process or pleading made upon the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident broker against whom

said process or pleading is directed. In any action in which service of process or pleading is made upon the commission no default shall be taken except upon certification of the chairman of the commission that a copy of said process or pleading was mailed to the defendant as herein provided. In actions in which service of process or pleading is made upon the commission, defaults may be entered and default judgments taken in the manner provided as in the case where publication of summons is had; provided the method of service of process or pleadings provided for by this section shall in no way limit section 93-2702, Revised Codes of Montana, 1947. (Rule 4, M.R. Civ. P.)

History: En. Sec. 13, Ch. 250, L. 1963.

66-1937. Grounds for refusal—suspension or revocation of license. The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

(1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit any money coming into his possession belonging to others;

(6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission or compensation to any person for performing the services of a real estate broker or real estate salesman who has not first secured his license under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, any deposit money or other money entrusted to him by any person with him as a representative of his registered broker;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman.

(20) Conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963.

66-1938. Hearings — procedures. (a) Before the commission shall deny any application for a license or revoke or suspend a license, the applicant or licensee shall be entitled to a hearing. The hearing shall be held after twenty (20) days' notice to the applicant or licensee. In case of filing of charges against a licensee, a copy of such charges shall be attached to the notice and be sent by registered mail to the last known address of the licensee. The licensee shall file an answer to the charges, in triplicate, within twenty (20) days after notice has been mailed by the commission. The commission shall thereupon notify the parties to the dispute of the time and place of hearing, which shall be held in accordance with rules promulgated by the commission and in conformity with the laws of this state. If the applicant or license holder is a salesman, the commission shall also notify the broker employing him or in whose employ he seeks to enter by mailing such a notice to the broker's last known business address.

(b) The applicant or licensee shall have full authority to be heard in person or by counsel before the commission in reference to the denial of application on charges filed against him.

(c) In the preparation and conduct of such hearing, the chairman shall have power to issue and sign subpoenas to require the attendance and testimony of any witness and the production of any papers or books. He may administer oaths, examine the witnesses and take any evidence

he deems pertinent to the determination of the charges. Any witness so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district courts of this state in civil actions, but the payment of such fees and mileage must be paid out of and kept within the limits of the funds created from such license fees. The party against whom such charges may be filed shall have the right to obtain from the chairman a subpoena for any witnesses whom he may desire at such hearing. The chairman shall issue such subpoenas as desired by the party against whom the charges have been filed. Depositions may also be taken and used as in civil court cases in the district courts.

(d) Where, in any proceeding before the commission, any witness shall fail or refuse to attend upon the subpoena issued, or shall refuse to testify, or shall refuse to produce any records or documents, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony, and the production of the documents and records may be enforced in the same manner as courts of competent jurisdiction enforce the attendance, testimony of witnesses and production of records in civil cases in the courts of this state.

History: En. Sec. 15, Ch. 250, L. 1963.

66-1939. Appeal to court—supersedeas—bond. (a) Any person aggrieved shall have the right of appeal from any adverse ruling, order or decision of the commission to the district court of the county in which he resides or maintains his business, or in the county where the hearing was held, within thirty (30) days from the service of notice of the action of the commission upon the parties thereto.

(b) Notice of appeal shall be filed in the office of the clerk of the court, which shall issue a writ of certiorari directed to the commission, commanding it, within ten (10) days after service thereof, to certify and file with the court a certified copy of the records of the case in which the appeal has been taken, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, conclusions, and orders therein. The appeal shall be heard in due course without a jury by the court, which shall review the record, and after hearing thereon, make its determination of the cause.

(c) Any person taking an appeal to the district court shall post a bond in the amount of three hundred dollars ($300.00) for the payment of any costs which may be taxed against him.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(e) An appeal may be taken to the supreme court from a district court by the commission or by any person aggrieved from an adverse ruling, order or decision of the district court. Such appeal shall be taken within sixty (60) days after the order is made and entered in the minutes of the court filed with the clerk. The method and procedure of taking an appeal, together with the amount of the undertaking or deposit on appeal, shall be governed by Chapter 80 of Title 93, Revised Codes of Montana, 1947.

(f) Any order, rule or decision of the commission shall not take effect until after the time for appeal has expired. In the event an appeal is taken by a licensee or applicant, the appeal shall not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

History: En. Sec. 16, Ch. 250, L. 1963.

66-1940. Penalties—legal actions. (a) Any person acting as a broker or salesman without first obtaining a license shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars ($500.00) or more than two thousand dollars ($2,000.00) or by imprisonment for a term not to exceed six (6) months, or both.

(b) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

(c) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained as the result of any act specified in section 14 [66-1937] herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 10 [66-1933] of this act.

History: En. Sec. 17, Ch. 250, L. 1963.

66-1941. Action for compensation. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963.

66-1942. Members of company—license required. Every member or officer of each partnership, association or corporation, who actively participates in the real estate brokerage business of such partnership, association or corporation, shall obtain a license as a real estate broker and every employee, who acts as a salesman for such partnership, association or corporation, shall hold a license as a real estate salesman.

History: En. Sec. 19, Ch. 250, L. 1963.

66-1943. Real estate meetings and clinics open to all licensees. (a) The commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes and to incur the necessary expenses in connection therewith.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

History: En. Sec. 20, Ch. 250, L. 1963.

66-1944. Attorney for commission. The attorney general of the state shall render to the commission opinions on all questions of law relating to the interpretation of this act or arising in the administration thereof. The attorney general shall further act as attorney for the said commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of this act; provided, all fees and expenses of the attorney general acting in such capacity shall be paid out of commission moneys in the earmarked revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963.

66-1945. Publication of directory. The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data as the commission may determine to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963.

66-1946. No repeal of section 94-1822. Nothing contained herein shall be construed to amend, modify or repeal section 94-1822 of the Revised Codes of Montana of 1947. This act shall be construed to be supplemental to said section 94-1822.

History: En. Sec. 25, Ch. 250, L. 1963.

Separability Clause

Section 23 of Ch. 250, Laws 1963 read "Unconstitutionality—severability. If any provision of this act is held invalid, that provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid, it shall not

affect the application of such provision to such persons or circumstances other than those to which it is held invalid."

Repealing Clauses

Section 24 of Ch. 250, Laws 1963 read "Repealing clause. This act expressly repeals sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957 and Chapter 132, Laws of 1957."

Section 27 of Ch. 250, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 26 of Ch. 250, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

CHAPTER 21—TITLE ABSTRACTERS—REGULATION

Section 66-2104. Compensation of members of board—disposition of funds.
66-2106. Reports of board.

66-2104. (4139.4) **Compensation of members of board—disposition of funds.** Each member of the board shall receive a compensation of five dollars ($5.00) per day for actual services while attending meetings or otherwise engaged upon business connected with the board, and shall receive ten cents ($0.10) per mile for each mile actually traveled, and the further sum of five dollars ($5.00) per day for expenses while absent from home upon business connected with the board.

All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the abstracters board of examiners.

History: En. Sec. 4, Ch. 105, L. 1931; amd. Sec. 124, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "which amount shall be paid upon verified vouchers after allowance by said board out of any funds in the hands of the state treasurer in the abstracters board fund" at the end of the first paragraph; deleted a first sentence of the second paragraph reading, "And there is hereby established a fund to be known as the abstracters board fund"; substituted "the earmarked revenue fund for the use of the abstracters board of examiners" at the end of the section for "the abstracters board fund, to meet the expenses incurred in carrying out the provisions of this act"; and deleted from the end of the section a proviso reading, "provided, the expenses of said board shall not exceed the fees collected."

66-2106. (4139.6) **Reports of board.** Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts and disbursements for the preceding biennial term; also a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act.

History: En. Sec. 6, Ch. 105, L. 1931; amd. Sec. 125, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "which said report shall not be printed except as the expense of the fund herein provided for" from the end of the section.

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

Section 66-2203. Expenses and funds—records and reports.
66-2204. Applications for license to practice—examinations—fees.
66-2209. Veterinary medicine defined.
66-2209.1. When pregnancy testing by unlicensed persons permitted.
66-2209.2. Statutory exemptions saved.

66-2203. (3219) Expenses and funds — records and reports. Each member of the board shall be entitled to receive all necessary traveling and subsistence expenses. The secretary-treasurer shall receive an additional salary to be fixed annually by the board and not to exceed five hundred dollars ($500.00) per annum. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of veterinary examiners. Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve (12) months immediately preceding.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965.

Amendments

The 1963 amendment deleted from the end of the first sentence a proviso reading, "provided such expenses shall not exceed the amount in the treasury during any fiscal year"; and substituted the fifth sentence (now the fourth sentence) for two sentences reading, "The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of five thousand dollars ($5,000.00). If, at any time, the amount of moneys received, after deducting such salaries and expenses, shall amount to more than five thousand dollars ($5,000.00), the secretary-treasurer shall forward the amount in excess of five thousand dollars ($5,000.00) to the treasurer of the state of Montana, and receive his official receipt for same."

The 1965 amendment deleted a third sentence reading, "The board shall require the secretary-treasurer to give bond in such sum and with such conditions as the board may from time to time direct."

66-2204. (3220) Applications for license to practice—examinations—fees. Any citizen of the United States who is over the age of twenty-one (21) years desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars ($25.00), which fee shall in no case be refunded. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees

from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medica and therapeutics, livestock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars ($25.00), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "and which shall become a part of the funds of the treasury of the board" at the end of the fourth sentence of the first paragraph.

66-2209. (3225) **Veterinary medicine defined.** Any person shall be deemed in the practice of veterinary medicine when he does any of the following:

(a) to (d). * * * [Same as parent volume.]

(e) Performs any manual or laboratory procedure for the diagnosis of pregnancy, sterility or infertility upon livestock for remuneration or hire.

No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana unless licensed by the state board of

veterinary medical examiners of the state of Montana, and registered as required by this chapter; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R. C. M. 1921; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965.

Amendment

The 1965 amendment added paragraph (e).

66-2209.1. When pregnancy testing by unlicensed persons permitted. Nothing in this act shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business, or by other persons whose services are rendered gratuitously.

History: En. Sec. 2, Ch. 191, L. 1965.

Title of Act

An act to amend section 66-2209 of the Revised Codes of Montana of 1947, as amended by chapter 90 of the Laws of 1955, relating to the definition of veterinary medicine; by including in such definition the performance of procedure for diagnosis of pregnancy, sterility or infertility upon livestock for remuneration.

66-2209.2. Statutory exemptions saved. Nothing herein contained shall be construed as modifying, amending, altering, or repealing any part of section 66-2211 of the R. C. M. of 1947.

History: En. Sec. 3, Ch. 191, L. 1965.

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section 66-2333. Receipts and disbursements—secretary—assistants.

66-2333. Receipts and disbursements—secretary—assistants. The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors. The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 66-2329. The board may appoint an assistant secretary or executive secretary or may employ such clerical or other assistants as are necessary for the proper performance of its work.

History: En. Sec. 10, Ch. 150, L. 1957; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted "deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors" at the end of the first sentence for "keep such moneys in a separate fund to be known as the 'professional engineers' fund'"; deleted the former second and third sentences reading, "Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrants drawn by the state auditor, upon claims filed and approved as required by law. All moneys in the 'professional engineers' fund' are hereby specifically appropriated for the use of the board"; deleted "and shall be paid out of the 'professional engineers' fund'" from the end of a third sentence later deleted by the 1965 amendment; and deleted from the end of the section language reading, "and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act, including the expenses of the board's

delegates to annual conventions of, and membership dues to, the national council of state boards of engineering examiners. Under no circumstances shall the total amount of warrants issued by the state auditor in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as herein provided."

The 1965 amendment deleted second and third sentences reading, "The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board."

CHAPTER 24—PLUMBERS

Section 66-2402. Application for state license—qualifications of licensees.
66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants.
66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers.
66-2407. Disposition of license fees.

66-2402. Application for state license—qualifications of licensees. Any such person desiring to work at the business of plumbing in any such city or town shall file his application for a state license with the secretary of the board of plumbing examiners of the state of Montana, and shall at such time and place as may be designated by the board of examiners of plumbers of the state of Montana, be examined as to his qualifications for working in such business.

The following requirements shall be met by applicants for a state license: (1) For journeyman plumbers:

(a) A specific record of five years experience in the field of plumbing, of a character satisfactory to the board. This experience requirement may be fulfilled by working five years in any major phase of the plumbing business, or by completing an apprenticeship program meeting the standards set by the Montana state apprenticeship council or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending trade or other schools specializing in training of value in the plumbing business and approved by the board.

(b) Satisfactory completion of an examination conducted by the board testing the applicant's general knowledge of subjects necessary to plumbing, testing his knowledge of techniques and methods employed in the plumbing business, and establishing by practical demonstration his competence in the special skills required in plumbing.

(2) For master plumbers:

(a) Evidence of five years experience as a journeyman plumber.

(b) Evidence of three years experience in supervisory capacities in the plumbing business.

(c) Satisfactory completion of an examination for master plumbers testing his knowledge of the plumbing business and demonstrating his familiarity with business practices normally encountered in the plumbing business.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965.

Amendment

The 1965 amendment added everything after the first paragraph.

66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants. Within sixty days after this act becomes a law, the governor of the state of Montana shall appoint a board of plumbing examiners consisting of seven members—two master plumbers, two journeyman plumbers, who shall be of legal age, residents of Montana for more than one year and shall have been at least five out of the last eight years, immediately preceding their appointment, duly licensed master or journeyman plumbers, one registered professional engineer, qualified in mechanical engineering, one member to be appointed at large as representative of the public who is not engaged in the business of installing or selling plumbing equipment, and the appointed representative of the Montana state board of health, who shall be a sanitary engineer and who shall be the secretary of the state board of plumbing examiners. The office of the engineer of the state board of health shall act as the office through which all business of the board shall be transacted. The appointed members of this board of plumbing examiners shall serve for a period of four years from the date of their appointment, providing however, the first board of plumbing examiners shall serve as follows: one member for one year, one member for two years, one member for three years and one member for four years and the governor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board of plumbing examiners or when a vacancy occurs, the governor shall make a new appointment for the unexpired term or for a period of four years. The journeyman plumber whose term would next expire after passage and approval of this act is hereby removed from said board and in his place and stead shall be installed said registered professional engineer, qualified in mechanical engineering. The members of the said board shall be entitled to a compensation of twenty dollars per diem, each, for each and every day while actually engaged in the work of the board, the compensation, however, to be paid from the revenue realized under the provisions of this act, but not otherwise. Any applicant for a state license to work at the business of plumbing in this state shall be examined as to his qualifications by the board of examiners of plumbers for the state of Montana. It shall be the duty of the said board to examine each applicant for a state license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a state license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in the state of Montana.

The additional members of the board shall be appointed by the governor to serve terms commencing July 1, 1965. The additional master plumber's term shall be coextensive with the present journeyman plumber's term, and the additional journeyman plumber's term shall be

coextensive with the present master plumber's term, and thereafter their respective terms shall be for four years.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965.

Amendments

The 1963 amendment deleted the words "the compensation, however, to be paid from the revenue realized under the provisions of this act, but not otherwise" at the end of the sixth sentence.

The 1965 amendment added one master plumber and one journeyman plumber to the board; restored to the sixth sentence the words deleted by the 1963 amendment; and added the second paragraph.

66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers. No applicant for a master plumber's license shall be entitled to submit to the examinations prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of the said board the sum of fifty ($50.00) dollars as an examination fee, and no applicant for a journeyman plumber's license shall be entitled to submit to the examination prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of twenty-five ($25) dollars as an examination fee. Each state license when issued shall expire one year from the date of its issuance, and shall have no force or effect after the expiration of one year after the date of its issuance. Any state license, however, issued to a master plumber or a journeyman plumber shall be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the secretary of the said board of plumbing examiners, and the payment of the sum of twenty-five ($25) dollars for a renewal of a master plumber's license, and the sum of ten ($10) dollars for a journeyman plumber's license, and any such renewal shall also be for the period of one year. After July 1, 1961, no master plumber's license shall be issued or renewed unless and until the applicant therefor shall have deposited with the board a good and sufficient bond to be approved by the board, or cash in lieu thereof, in the amount of five thousand dollars ($5,000) to insure the faithful performance of his duties arising out of the provisions of the state plumbing code or the provisions of chapter 24, Title 66, Revised Codes of Montana.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965.

Amendment

The 1965 amendment increased the examination fees specified in the first sentence from $25 to $50 for master plumbers, and from $10 to $25 for journeyman plumbers; and increased the renewal fees specified in the second sentence from $10 to $25 for master plumbers, and from $5 to $10 for journeyman plumbers.

66-2407. Disposition of license fees. All moneys paid for state license fees as provided for in this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing examiners.

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing examiners" for the words "placed in the custody of the state treasurer, who shall

keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred by the state board of examiners of plumbers in carrying out the provisions of this act" at the end of this section.

66-2418. Repealed.

Repeal

This section (Sec. 7, Ch. 251, L. 1959), relating to payment of expenses of the board, was repealed by Sec. 242, Ch. 147, Laws 1963.

Compiler's Note

Section 3, Ch. 186, Laws 1965, purported to amend this section, but the attempted amendment is apparently void under the provisions of sec. 43-515. As amended in 1965, the section would have read:

"66-2418. Expenses—defraying. Any moneys paid for state license fees for state plumber licenses, as provided for in Title 66, chapter 24 [66-2401 to 66-2411] of the laws of the state of Montana, may be applied in defraying the expense of the board in carrying out the provisions of this act.

"For the purpose of providing adequate inspection and enforcement of the state plumbing code provided for in this chapter there shall be collected a fixture fee of fifty cents per fixture for every fixture installed after July 1, 1965. For this purpose, a fixture shall mean any device connected by a water connection to a water system or by a trap to a sewer line. This fixture fee shall be payable before installation by the licensed master plumber responsible for installation of the fixture. It shall be payable to the state plumbing board under regulations prescribed by the board for the purposes set forth herein, and the board may assign the inspection and enforcement of the state plumbing code and collection of such fees to a state plumbing inspector, and such deputies as may be reasonably necessary to accomplish adequate inspection, enforcement and collection. Installation of fixtures as defined herein by a licensed master plumber without payment of the fee herein provided shall subject such master plumber to a fine of $100 for each offense or to forfeiture of his bond under section 66-2405."

CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

Section 66-2503. Application for examination—examination fee.

66-2503. Application for examination—examination fee. Unless entitled to a license under section 66-2504 or 66-2505, a person who desires to be licensed as a physical therapist shall apply to the board, in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the secretary of the board of medical examiners at the time of filing his application a fee of twenty-five dollars ($25.00) which shall be deposited in the earmarked revenue fund for the use of the board of medical examiners. Anyone failing to pass the required examination shall be entitled to a second examination within six months without additional fee.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted the words "which shall be deposited in the earmarked revenue fund for the use of the board of medical examiners" at the end of the third sentence and deleted a former fourth sentence which read: "This fee will become part of the board of medical examiners' fund and shall not be used or expended for any purpose other than as provided for in section 66-1009."

CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

Section 66-2604. Water well contractor's examining board—members—terms—oath—seal—employees.
66-2605. Powers and duties of the board.

66-2606. Water well contractor's licenses.
66-2615. Completion of contracts by successor in interest of licensed contractor.

66-2602. Purpose of the act—definitions—exemptions.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963.

Compiler's Note

Section 2, Ch. 234, Laws 1963, purported to amend this section, but it made no change.

66-2604. Water well contractor's examining board—members—terms—oath—seal—employees. (1) to (4). * * * [Same as parent volume.]

(5) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. The appointed member of the board shall receive, as compensation for his services, the sum of fifteen dollars ($15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board.

History: En. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from subd. (5) a former second sentence which read: "Payment for any such services shall be made out of the hereinafter designated fund, and no other" and a former fourth sentence which read: "Such payments to the appointed member of compensation, mileage and per diem expenses shall be made out of the hereinafter designated fund, and no other."

66-2605. Powers and duties of the board. (1) to (4). * * * [Same as parent volume.]

(5) Within one hundred twenty (120) days of the effective date of this act, the board shall organize and conduct a public hearing for the purpose of adopting reasonable rules and regulations for the future conduct of its business. Such hearing shall be had only after at least ten (10) days' printed notice of the same has been given, announcing the hearing, the time, the place and the purpose therefor. Publication shall be made in at least five (5) daily newspapers in this state. Following such hearing, said rules and regulations shall be adopted and compiled in printed form for distribution to interested persons, for which the board may charge a fee; and sums realized from such sales shall be deposited with the treasurer of this state in the earmarked revenue fund for the use of the water well contractor's examining board.

(6). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for the use of the water well contractor's examining board" at the end of subsection (5) for language reading, "a special fund to be designated as the 'Water Well Contractor's Examining Board Fund,' and the funds therein shall be used for the purpose of paying expenses of the board, and for no other purpose. All sums expended from this fund shall be approved as provided by law. Upon termination of this board, any balance remaining in said fund shall be paid over to the general fund of the state of Montana. All accounts and expenditures of said board shall be certified by the board, approved by the board of examiners of the state of Montana, and paid by the state treasurer upon warrants drawn by the state auditor out of said fund."

Chapter 234, Laws 1963, substituted "for which the board may charge a fee" in the fourth sentence of subsection (5) for "The board shall charge a fee of fifty cents (50¢) per copy"; and made minor changes in punctuation.

66-2606. Water well contractor's licenses. Any person desiring to engage in the drilling, making or construction of one (1) or more wells for underground water in this state shall first file an application with the board for a contractor's license, setting out his qualifications therefor, the equipment proposed to be used in such contracting, and such other business as may be required by the board, all upon forms to be adopted by the board. The board shall charge a fee of one hundred dollars ($100.00) for the filing of such application by any person, and it shall not act upon any application until such fee has been paid. All fees collected hereunder shall be deposited with the state treasurer in the earmarked revenue fund for the use of the water well contractor's examining board. A license to construct water wells shall be issued to any applicant if, in the opinion of the board, such applicant is qualified to conduct water well construction operations. In the granting of such licenses, the board shall have due regard for the interest of the state of Montana in the protection of its underground waters. Applicants for licenses hereunder who have engaged in the business of water well drilling or construction for a period of more than three (3) years prior to the effective date of this act, and who have been bona fide residents of the state of Montana for more than one (1) year preceding the date of application, may, at any time within one (1) year after the effective date of this act make application for license hereunder and payment of the fee of one hundred dollars ($100.00), as herein provided, and the board shall issue a license to any such applicant without examination, when he shall submit evidence, under oath, satisfactory to the board that he is of good character, that he was engaged in the occupation of water well contractor at the time this act became effective, and that his work as such is satisfactory to the board. All other applicants shall be subject to examination as hereinafter provided.

A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (1) through (6) set out in section 66-2608, R.C.M., 1947, and who shall have applied for license as provided by this act. Such temporary license shall entitle the holder thereof to engage in the business of drilling, making or construction of water wells until the time of the next ensuing examination given by the board. Upon such applicant's successfully meeting the board's requirements upon such examination, the

temporary license shall be returned to the board and a regular license issued. Should the holder of a temporary license fail, after notice of the holding of such examination, to submit himself for examination or to meet the board's requirements, such temporary license shall expire and be returned to the board for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "earmarked revenue fund for the use of the water well contractor's examining board" for "water well contractor's examining board fund, and shall be used to pay expenses of the board as set forth in this act, and for no other purpose" at the end of the third sentence.

Chapter 234, Laws 1963, added the second paragraph.

66-2615. Completion of contracts by successor in interest of licensed contractor. Upon the transfer, by operation of law, to the successor in interest of a licensed water well contractor's rights under a contract or agreement for the drilling or making of a water well or wells, the successor in interest to such rights shall be permitted to engage in the business of drilling, making or construction of water wells to the extent necessary to perform the obligations of said licensed water well contractor under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor.

History: En. Sec. 1, Ch. 234, L. 1963.

Title of Act

An act to permit the successor in interest to the rights of a licensed water well contractor under a contract for water well construction to engage in the water well construction business to the extent necessary to fulfill said contractor's obligations and providing conditions therefor; amending section 66-2602, R. C.M., 1947, as amended, to permit compliance with the examination and licensing provisions of the Montana Water Well Contractor's License Act by any one member of a firm, copartnership or association or the manager of a corporation; amending section 66-2605, R.C.M., 1947, as amended, to make permissive the exacting of a fee for copies of board rules and regulations; and amending section 66-2606, R.C.M., 1947, as amended, to permit the temporary licensing of a water well contractor prior to examination for competency and providing conditions therefor.

CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS

Section 66-2701. Definitions.
66-2702. State board of morticians—appointment and term of office.
66-2703. Officers of board—compensation of members.
66-2704. Meetings—quorum—rules and regulations.
66-2705. Employees of board.
66-2706. Disposition of fees.
66-2707. Funeral directing.
66-2708. Embalming and mortuary science—qualifications for mortician's license.
66-2709. Examination for morticians.
66-2710. Intern mortician's license.
66-2711. Mortician's license—fee and renewal.
66-2712. Reciprocity.
66-2713. Operation and licensing of mortuaries.

66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license.
66-2715. Hearing and notice—revocation and suspension of licenses.
66-2716. Appeal.
66-2717. Penalty provision.

66-2701. Definitions. As used in this act

(1) "Board" means the state board of morticians.

(2) "Funeral directing" includes

(a) supervising funerals,

(b) preparing dead bodies for burial other than by embalming,

(c) maintaining a mortuary for the preparation, disposition or care of dead human bodies, and

(d) the holding out to the public that one is a funeral director or undertaker.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.

(4) "Mortuary science" is the profession or practice of funeral directing and embalming.

(5) A "mortician" is a person licensed under the laws of the state of Montana to practice mortuary science.

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: En. Sec. 1, Ch. 41, L. 1963.

Title of Act

An act regulating the operation of mortuaries and the practice of mortuary science and funeral directing; establishing a state board of morticians; amending sections 69-119, 69-2306, 69-2309, 69-2310, and 9-604, R.C.M. 1947; and repealing sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710, and 82-711, R.C.M. 1947.

66-2702. State board of morticians—appointment and term of office. There is in state government a state board of morticians consisting of five licensed morticians appointed by the governor with the advice and consent of the senate. The original members of the board shall be appointed for one (1), two (2), three (3), four (4), and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 2, Ch. 41, L. 1963.

66-2703. Officers of board—compensation of members. The board shall elect a chairman, a secretary-treasurer, and any other necessary officers. Board members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties. In addition to such reimbursement the secretary-treasurer may be paid a salary set by the board.

History: En. Sec. 3, Ch. 41, L. 1963.

66-2704. Meetings—quorum—rules and regulations. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules and regulations to carry out the purposes of this act.

History: En. Sec. 4, Ch. 41, L. 1963.

66-2705. Employees of board. The board may employ whatever temporary or permanent personnel are necessary to carry out the provisions of this act.

History: En. Sec. 5, Ch. 41, L. 1963.

66-2706. Disposition of fees. All moneys collected by the board shall be deposited with the state treasury and shall be used only for the purposes of defraying the necessary expenses of administering this act.

History: En. Sec. 6, Ch. 41, L. 1963.

66-2707. Funeral directing. The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the board. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license upon payment of an annual license fee to the board on July 1 of each year. The amount of the annual license fee shall be set by the board but shall not exceed five dollars ($5). A funeral director's license shall not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963.

66-2708. Embalming and mortuary science—qualifications for mortician's license. The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the board. To qualify for a mortician's license a person must

(1) Be at least twenty-one (21) years of age.

(2) Be of good moral character.

(3) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university. This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act.

(4) Pass an examination prescribed by the board.

(5) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963.

66-2709. Examination for morticians. A person possessing the necessary qualifications may apply to the board for a license and upon payment of an application fee of twenty-five [dollars] ($25.00), may take the ex-

amination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board deems necessary.

History: En. Sec. 9, Ch. 41, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "dollars."

66-2710. Intern mortician's license. An applicant who passes the examination, upon payment of a license fee of three dollars ($3.00), shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana, and upon completion of one year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963.

66-2711. Mortician's license—fee and renewal. (1) The annual license fee for a mortician's license must be in the hands of the secretary-treasurer or postmarked before July 1 of the assessment year. The amount of the annual license fee shall be set by the board but shall not exceed ten dollars ($10.00). A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of such date, apply for and receive a mortician's license upon payment of the license fee.

(2) Failure to pay the annual license fee shall result in automatic suspension of the license. The license may be reinstated by the payment of all unpaid license fees plus a penalty of twenty-five dollars ($25.00).

History: En. Sec. 11, Ch. 41, L. 1963.

66-2712. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if such state has a reciprocal agreement with Montana.

History: En. Sec. 12, Ch. 41, L. 1963.

66-2713. Operation and licensing of mortuaries. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place. The board may adopt rules and regulations prescribing reasonable standards for such establishments, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules and regulations are complied with. Such inspection or inspections shall be made at the discretion of the board, and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board, but not to exceed twenty-five dollars ($25.00) per year.

(3) A mortuary license may be suspended or revoked upon proof of

(a) noncompliance of board rules or regulations relating to the operation of mortuaries,

(b) violation of any of the laws, rules, or regulations of the state, district, or local board of health governing the disposition of dead human bodies, or,

(c) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

(4) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

History: En. Sec. 13, Ch. 41, L. 1963.

66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) If the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license, or in passing the examination.

(2) If the applicant or licensee has been convicted of a felony.

(3) If the applicant or licensee has violated any section of this act or any rule or regulation of the state, district, or local board of health governing the disposition of dead human bodies, or any rule of the board regulating the professions of mortuary science or funeral directing, or the operation of a mortuary.

(4) If the licensee has participated in any scheme in the nature of a burial association or burial certificate plan which does not properly protect the rights of the public, or where there is any element of fraud, or where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral, or the freedom of choice as to which funeral directors or morticians shall be employed.

History: En. Sec. 14, Ch. 41, L. 1963.

66-2715. Hearing and notice—revocation and suspension of licenses. No action to suspend, revoke, or cancel a license shall be taken by the board until the accused has been furnished, at least thirty (30) days prior to the date of the hearing, with a statement of the charges against him and notice of the time and place of hearing the charges. If, upon the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person. A stenographic report of each proceeding to revoke or suspend the license shall be made at the expense of the board and a transcript kept in its files. A copy of the transcript shall be furnished to the person so charged and accused.

History: En. Sec. 15, Ch. 41, L. 1963.

66-2716. Appeal. A person who has been refused a license or whose license has been revoked or suspended, may file with the secretary of the board, within thirty (30) days after the decision of the board, a written notice of appeal to any district court of the state of Montana. The court

is limited in its proceedings to a determination of whether the action of the board was in accord or consistent with this act or the constitution of this state, or whether the action of the board was arbitrary or an abuse of discretion. When a notice of appeal is filed the secretary of the board shall transmit to the clerk of the court the record of the board's proceedings. The judgment of a district court of the state of Montana, may, in the manner provided for appeal of civil action, be reviewed upon proceedings on appeal in the supreme court.

History: En. Sec. 16, Ch. 41, L. 1963.

66-2717. Penalty provision. A person who violates this act is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963.

CHAPTER 28—ELECTRICAL SAFETY LAW

Section 66-2801. Short title.
66-2802. Purpose.
66-2803. Definitions.
66-2804. State electrical board.
66-2805. Oath—meetings—powers.
66-2806. Electrician must have license.
66-2807. License requirements.
66-2808. Unauthorized use of title.
66-2809. License to nonresidents—reciprocity.
66-2810. Temporary permits.
66-2811. License without written examination.
66-2812. Exemptions.
66-2813. Appeals.
66-2814. Fees.
66-2815. Examination fees.
66-2816. Licensing of those presently qualified.
66-2817. Apprentices—rules and regulations—record kept by state board.
66-2818. Municipal ordinances for electrical standards—authority.
66-2819. Disposition of fees.
66-2820. Violations—penalty.

66-2801. Short title. This act is to be known and referred to as the Electrical Safety Law.

History: En. Sec. 1, Ch. 148, L. 1965.

Title of Act

An act defining master electricians, journeyman electricians, and electrical contractors, and setting forth the qualifications, examination and licensing of each; adopting a code of standards; providing for certain exceptions; establishing a state electrical board; providing for appointment of state electrical inspectors; providing for the issuance of licenses and temporary permits and inspection fees; providing for license examination; providing for disposition of fees; providing a penalty; repealing sections 16-1180 and 16-1181; and providing an effective date.

66-2802. Purpose. The purpose of this act is to protect the health and safety of the people of Montana from the danger of electrically caused shocks, fires and explosions and to protect property from the hazard of electrically caused fires and explosions, and to establish a procedure for determining where and by whom electrical installations are to be made and to assure the public that persons making electrical installations are qualified, and that the electrical installations and electrical products made and sold within this state meet minimum safety standards. From and

after the taking effect of this act, all installations in the state of Montana of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to such work as far as the same covers both fire and personal injury hazards, and as the National Electrical Code shall be amended, revised, compiled and published from time to time and as such amendments or revisions are adopted by the board.

History: En. Sec. 2, Ch. 148, L. 1965.

66-2803. Definitions. (a) The term "master electrician" means a person having the necessary qualifications, training, experience and technical knowledge to properly plan, lay out and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes in accordance with standard rules and regulations governing such work.

(b) The term "journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes, in accordance with standard rules and regulations governing such work.

(c) The term "electrical contractor" means any person, firm, copartnership, corporation, association, or combination thereof, who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations shall not be classed as an electrical contractor.

History: En. Sec. 3, Ch. 148, L. 1965.

66-2804. State electrical board. There is hereby established a state electrical board which shall consist of three members, appointed by the governor, with the consent of the senate, who shall be residents of the state of Montana. One of said members shall be an electrical contractor, one shall be a journeyman electrician, and one shall be appointed from the public at large. The original members of the board shall be appointed within twenty (20) days after the effective date of this act for one (1), two (2) and three (3) years, respectively, as determined by the governor, and all appointments thereafter shall be for a term of three (3) years. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member. Each member of the board shall receive the actual and necessary expenses incurred in the performance of his duties, all to be paid out of the electricians' fund herein created.

History: En. Sec. 4, Ch. 148, L. 1965.

66-2805. Oath—meetings—powers. (a) Each member of the board, before entering on the discharge of his duties, and within thirty (30) days

from the effective date of his appointment, shall subscribe to an oath for the faithful performance of duty before any officer authorized to administer oaths in this state and shall file the same with the secretary of state.

(b) The board shall, within thirty (30) days after July 1, 1965, and annually thereafter in the month of July, elect from the membership thereof a president, vice-president and a secretary-treasurer. The board shall meet quarterly and at such other times as it shall deem necessary.

(c) The board is authorized and empowered to:

(i) Prescribe, amend and enforce rules and regulations consistent with this act for the administration of this act and to effectuate the purposes thereof, and for the licensing of electrical contractors and the examination and licensing of journeymen electricians, and to make inspections of electrical installations, and to issue inspection tags covering such installations, and to establish and charge a reasonable and uniform schedule of fees therefor, which shall not exceed the expenses of providing such inspection service. Individuals, firms, co-operatives, corporations, or municipalities selling electricity hereinafter known as a power supplier, shall not connect with or energize any electrical installation, coming under the provisions of this act, unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag, issued by the board except in cities or towns that have no inspection facilities, covering the installation to be energized. Immediately after an installation has been energized, the power supplier shall deliver to the board or its authorized agent, the inspection tag covering such installation except in cities or towns having no inspection facilities. It shall be unlawful for any person, partnership, company, firm, association or corporation other than a power supplier, to energize any electrical installation coming under the provisions of this act unless an application for an electrical inspection tag, covering such installation, together with the inspection fee herein provided, has been forwarded to the board except in cities or towns having no inspection facilities:

(ii) Adopt a seal, and the secretary shall have the care and custody thereof;

(iii) Examine, license, and renew the licenses of duly qualified applicants for electrical contractor, journeyman electrician or master electrician as provided in this article;

(iv) Cause the prosecution and enjoinder of all persons violating this article and incur necessary expenses therefor;

(v) Employ such technical, clerical, or other assistance as is necessary for the proper performance of its work.

History: En. Sec. 5, Ch. 148, L. 1965.

66-2806. Electrician must have license. No person shall engage in or work at the business, trade, or calling of electrical contractor, journeyman electrician or master electrician in this state, until he shall have received

from the state electrical board and [a] license or permit to work as an electrical contractor, journeyman electrician or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965.

Compiler's Note

The compiler has inserted the bracketed word "a."

66-2807. License requirements. (a) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has one year of practical electrical experience, or that he is a graduate of an electrical trade school and has at least four years of practical experience in electrical work, or that he has had at least five years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power. Applicants for license as a master electrician shall file an application on forms prepared and furnished by the state electrical board, together with the examination fee. The board shall, not less than thirty days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take such written examination or that such evidence is insufficient and is rejected and in the event the application is rejected the board shall set forth the reasons therefor in the notice to the applicant, and shall forthwith return such applicant's examination fee. The place of examinations shall be designated in advance by the board and examinations shall be held not less often than once a year and at such other times as, in the opinion of the board, the number of applicants warrants.

(b) The written examination shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(i) The National Electrical Code;

(ii) Cost estimating for electrical installments;

(iii) Procurement and handling of materials needed for electrical installations and repair;

(iv) Reading of blueprints for electrical work;

(v) Drafting and layout of electrical circuits;

(vi) Knowledge of practical electrical theory.

(c) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least four (4) years apprenticeship in the electrical trade or four (4) years practical experience in the wiring for, installing, and repairing electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as provided for in the case of master electricians' licenses.

(d) The written examination for a journeyman's license shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(i) The Ohms law;

(ii) The National Electrical Code;

(iii) Layout and practical installation of electrical circuits.

(e) To insure impartiality, the examination shall be by numbers which shall be drawn by lot, and no paper shall be marked in the name of any applicant but shall be anonymously graded by the board. The examination passing grade shall be seventy-five per cent (75 %) of perfection. If it shall be determined that the applicant has passed the examination, the secretary, upon payment by the applicant of the fee, shall issue to the applicant a license which shall authorize him to engage in the business, trade, or calling of a journeyman electrician or master electrician. Each such original license shall by its terms expire on the fifteenth day of July which is at least one (1) year but not more than two (2) years subsequent to the date of issuance.

(f) All licenses of journeyman electricians or master electricians, unless such licenses have been suspended or revoked by the board, shall be renewed for a period of one (1) year by the board upon application for such renewal being made to the board prior to the fifteenth day of July of the year in which the prior license expired and upon the payment of an annual renewal fee. If application for renewal is not made prior to said fifteenth day of July, an additional fee of five dollars ($5) shall be paid on account of such delinquency in renewal; but all such applications for renewal must be made prior to the fifteenth day of August of that year, otherwise the license shall be forfeited, and such applicant shall be required to pass the examination and pay the fees required of applicants for original licenses.

History: En. Sec. 7, Ch. 148, L. 1965.

66-2808. Unauthorized use of title. No person, firm, partnership, corporation or association shall assume or use the title or designation of licensed master electrician or licensed journeyman electrician unless qualified and licensed under this act.

History: En. Sec. 8, Ch. 148, L. 1965.

66-2809. License to nonresidents — reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the state electrical board may grant licenses to electricians licensed by such other states, upon payment by the applicant of the required fee and upon furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: En. Sec. 9, Ch. 148, L. 1965.

66-2810. Temporary permits. The state electrical board may issue temporary permits to engage in the work of a master electrician or journeyman electrician to any applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination provided in this article and who pays the fee. Temporary permits shall continue in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license,

any fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965.

66-2811. **License without written examination.** The state electrical board may issue a license as a master electrician or journeyman electrician to any applicant without written examination upon satisfactory proof that said applicant has the qualifications to apply for a license under this act and is the holder of a valid license issued by any city or other political subdivision of the state providing for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965.

66-2812. **Exemptions.** (a) Nothing in this act shall be deemed to apply to the installation or maintenance of communication circuits, wires and apparatus; nor to any electrical public utility, or its employees, in the installation and maintenance of electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants, lines or system. The licensing provisions of this act shall not apply to persons making electrical installations on their own property or to regularly employed maintenance electricians working on the premises of their employer.

(b) Nothing in the article shall be construed to require any individual to hold a license before doing electrical work on his own property.

(c) Any person may work as an apprentice to a licensed electrician but shall not do any electrical wiring for or installation of electrical apparatus or equipment for light, heat, or power, except with and under the direct supervision of a licensed electrician.

(d) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction and control of a licensed master electrician.

(e) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(f) No provisions of this article shall in any manner interfere with, hamper, preclude or prohibit any vendor of any electrical appliance, from selling, delivering and connecting any electrical appliance, if the connection of said appliance does not necessitate the installation of electrical wiring of the structure where said appliance is connected.

History: En. Sec. 12, Ch. 148, L. 1965.

66-2813. **Appeals.** Any person aggrieved by a decision of the board, and affected thereby, shall be entitled to judicial review by filing in the district court of the county of his residence or in the district court of the county of Lewis and Clark, within ninety (90) days after the decision of the board, an action requesting such review. Review shall be by trial as in other civil cases, de novo.

History: En. Sec. 13, Ch. 148, L. 1965.

66-2814. Fees. Each electrical contractor shall, on or before the first day of July of each year, file with the state electrical board an application in writing for each firm operated by him in Montana to obtain a license therefor. No license shall be issued until the applicant meets the requirements and has paid to the state electrical board a license fee of seventy-five dollars ($75) for each firm operated by him. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue. Every electrical contractor licensed under the provisions of this act shall be entitled to have his license renewed for the ensuing year, upon the expiration of his license, by the payment to the state electrical board of a fee of seventy-five dollars ($75) on or before the date of expiration of such license.

History: En. Sec. 14, Ch. 148, L. 1965.

66-2815. Examination fees. (a) All master electricians not being electrical contractors and all journeyman electricians performing work or intending to perform work for hire of installing electric wiring or equipment to convey electric current, or installing apparatus to be operated by such current, shall, within sixty (60) days after the first day of July, 1965, make application for a license to the state electrical board. The application shall be on a form furnished by the state electrical board and be accompanied by an examination fee of ten dollars ($10). The forms shall state the applicant's full name, his address, the extent of his experience, and such other information as may be required by the state electrical board. Upon applicant's complying with the rules and requirements promulgated by the state electrical board and, being qualified, successfully completes the examination, he shall pay to the state electrical board an annual license fee of twenty-five dollars ($25) for a master electrician's license; ten dollars ($10) for a journeyman electrician's license, and upon receipt thereof, he shall be issued the proper license by said board. Any person serving a four (4) year electrician apprenticeship under the supervision of a licensed electrician shall be exempt from the licensing provision of this paragraph during training. Provided, however, that credit for the time spent in any electrical school shall be given to the master electrician, journeyman electrician or apprentice for the time spent in said classes, up to a total of two (2) years on the aforementioned four (4) year requirement.

History: En. Sec. 15, Ch. 148, L. 1965.

66-2816. Licensing of those presently qualified. Montana resident electricians who, prior to the effective date of this act, have had at least four (4) years practical experience in installing electric wires and equipment covered by the National Electrical Code shall not be required to take the examination, but shall be issued a license by the board upon payment of the proper license fee and furnishing of proof satisfactory to the board of such four (4) years' experience; provided, such application is made within sixty (60) days after July 1, 1965. All Montana resident contractors doing business on the effective date of this act shall

be qualified to receive said license if application is made within the time provided herein.

History: En. Sec. 16, Ch. 148, L. 1965.

66-2817. Apprentices—rules and regulations—record kept by state board. Nothing in this act shall prohibit any person from working as an apprentice in said trade of electrician with an electrician duly licensed by said board as herein provided for, and under such rules and regulations as may be prescribed from time to time by the state electrical board; provided, the name and residence of each apprentice, and the names and residences of their employers, shall be duly filed with said board, and a record shall be kept by said board, showing the names and residences of such apprentices.

History: En. Sec. 17, Ch. 148, L. 1965.

66-2818. Municipal ordinances for electrical standards—authority. Any municipality of the state of Montana may by ordinance adopt rules and regulations governing electrical installations within its corporate limits, but the standards provided for therein shall not be less nor lower than the minimum standards provided for them in the state electrical code.

History: En. Sec. 18, Ch. 148, L. 1965.

66-2819. Disposition of fees. All moneys received under this act shall be deposited with the state treasurer and credited to an account to be designated by the state treasurer as the proper account for the fund hereby created. No money shall be paid out of said fund except upon voucher drawn against said fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the state electrical board for the payment of salaries and expenses incurred by it in the performance of its duties under this act.

History: En. Sec. 19, Ch. 148, L. 1965.

66-2820. Violations—penalty. Any person or corporation violating any provision of this act shall upon conviction thereof, if a person, be punished by a fine not more than five hundred dollars ($500), or by imprisonment for a term not to exceed six (6) months, or by revocation of his license or by such fine, imprisonment and revocation, in the discretion of the court; and if a corporation, be punished by a fine of not more than one thousand dollars ($1,000). Any officer or agent of a corporation, or member or agent of a copartnership or association, who shall personally participate in or be accessory to any violation of this act by such copartnership, association, corporation, shall be subject to the penalties herein prescribed for individuals.

History: En. Sec. 20, Ch. 148, L. 1965.

Repealing Clause

Section 21 of Ch. 148, Laws 1965 repealed sections 16-1180 and 16-1181 and all acts and parts of acts in conflict with Ch. 148.

Effective Date

Section 22 of Ch. 148, Laws 1965 read "This act shall be in full force and effect from and after the 1st day of July, 1965."

TITLE 67—PROPERTY

Chapter 8. Obligations incidental to the ownership of real property—monuments and fences, 67-808, 67-809.
13. Acquisition of property by accession—fixtures—islands, etc., 67-1301.
14. Acquisition of personal property by accession—union of parts, 67-1410.
16. Transfer of real property—method and effect, 67-1602.1.
19. Principal and Income Act, 67-1912.
20. Surveys and co-ordinates, 67-2001 to 67-2019.
21. Sale or lease of subdivided lands, 67-2101 to 67-2116.
22. Disposition of unclaimed property, 67-2201 to 67-2230.
23. Unit Ownership Act, 67-2301 to 67-2342.

CHAPTER 1—GENERAL RIGHTS OF STATE OVER PROPERTY

67-103. (29) Acquisition by taxation.

References

Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

67-201. (6663) Property, what constitutes.

References

Cited in State ex rel. Burns v. City of Livingston, — M —, 395 P 2d 971, 973.

67-209. (6669) Fixtures.

Attachment to Realty

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the improvement was so attached that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. Sanders v. Butte Motor Co., 142 M 524, 385 P 2d 263.

67-211. (6671) Appurtenances.

Conveyance of Appurtenant Water Rights

In the absence of a reservation by the grantor, water rights appurtenant to a divided tract are proportioned to each division, and the share received by each division is determined by the ratio of number of irrigated acres to the total number of irrigated acres irrigated by the water. Spaeth v. Emmett, 142 M 231, 383 P 2d 812.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

67-307. (6679) Ownership of several persons.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

67-308. (6680) Joint interest defined.

Estates by Entirety

While a joint tenancy is a joint interest, a joint interest is not limited to the estate of joint tenancy but may include estates by entirety; however, estates by the entirety are no longer a permissible mode of property ownership in this state, and where husband and wife took under a deed to them "as joint tenants with right of survivorship and not as tenants in common" the property was held in a joint tenancy and this was not converted by divorce into a tenancy in common. Clark v. Clark, 143 M 183, 387 P 2d 907.

Shares of Stock

Stocks issued in the names of deceased and his children as joint tenants with the right of survivorship and not as tenants in common, deposited in safety deposit boxes rented in the names of the owners who had inspected the stock in the safety deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. Marans v. Newland, 141 M 32, 374 P 2d 721, 735.

67-310. Right of survivorship in certain conveyances recognized.

Estates by Entirety

While a joint tenancy is a joint interest, a joint interest is not limited to the estate of joint tenancy but may include estates by entirety; however, estates by the entirety are no longer a permissible mode of property ownership in this state, and where husband and wife took under a deed to them "as joint tenants with right of survivorship and not as tenants in common" the property was held in a joint tenancy and this was not converted by divorce into a tenancy in common. Clark v. Clark, 143 M 183, 387 P 2d 907.

Exception to Right of Survivorship

Where husband and wife owned realty jointly, and husband feloniously killed his wife, he did not acquire her share by right of survivorship but took the property under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. In re Cox' Estate, 141 M 583, 380 P 2d 584.

67-313. (6683) What interests are in common.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

CHAPTER 6—SERVITUDES

67-601. (6749) Servitudes attached to land.

Ditch Right of Way

A ditch right is an easement under subsection 11 of this section. Hughes v. King, 142 M 227, 383 P 2d 816.

In an action for a ditch easement, where defendant showed no actual right to the easement, the district court erred in granting it merely because in doing so the damage done to plaintiff's property would be less than that done to the property of the defendant should the easement be denied. Colarchik v. Watkins, — M —, 393 P 2d 786.

67-609. (6757) Actions by owner and occupant of dominant tenement.

References

Hughes v. King, 142 M 227, 383 P 2d 816.

CHAPTER 7—RIGHTS INCIDENTAL TO OWNERSHIP OF REAL PROPERTY

67-712. (6771) Boundaries by water.

Avulsive Change

Where stream channel, intended to serve as boundary, moved one-quarter mile in less than 100 years, such movement was "perceptible" and therefore avulsive. McCafferty v. Young, — M —, 397 P 2d 96.

CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

Section 67-808. Restriction on liability to gratuitous licensee for recreation.
67-809. Recreational purposes defined.

67-808. Restriction on liability to gratuitous licensee for recreation. A landowner or tenant who permits by act or implication, any person to enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor, does not by granting such permission, extend any assurance that such property is safe for any purpose, nor confer upon such a person the status of invitee or licensee to whom any duty of care is owed, and such landowner or tenant, shall not be liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant, unless such act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965.

Title of Act

An act limiting the liability of a landowner or tenant to persons permitted to enter lands for recreational purposes, and defining recreational purposes.

67-809. Recreational purposes defined. Recreational purposes as used herein shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965.

CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY

67-1203. (6818) Prescription.

Easement by Prescription

Title to an easement acquired by prescription is as effective as though evidenced by a deed. Scott v. Weinheimer, 140 M 554, 374 P 2d 91, 94.

To establish the existence of an easement by prescription, the party so claiming must show open, notorious, exclusive, adverse, continuous and uninterrupted use of the easement claimed for the full statutory period. Scott v. Weinheimer, 140 M 554, 374 P 2d 91, 95.

Plaintiffs, who acquired prescriptive easement in road across property of defendants by use for thirty-five years before defendants acquired title to the land and attempted to obstruct use, were entitled to enjoin defendants from interfering with use of right of way over road. Scott v. Weinheimer, 140 M 554, 374 P 2d 91, 96.

Highway Established by Prescription

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, the county acquired an easement by prescription over the land even though the private owner was assessed for and paid taxes on the property during the running of the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

Water Rights

Defendants failed to establish a prescriptive water right regardless of priority of rights, where depositions which were self-serving declarations were not admissible as ancient documents or public records as exceptions to hearsay rule and no other satisfactory proof of possession or use of the water was shown. King v. Schultz, 141 M 94, 375 P 2d 108, 110.

CHAPTER 13—ACQUISITION OF PROPERTY BY ACCESSION—FIXTURES —ISLANDS, ETC.

Section 67-1301. Fixtures.

67-1301. (6819) **Fixtures.** When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 67-1307 and in the Uniform Commercial Code, belongs to the owner of the land, unless he chooses to require the former to remove it. [Effective January 1, 1965.]

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R. C. M. 1921; amd. Sec. 11-146, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1013. Based on Field Civ. C. Sec. 442.

Amendment

The 1963 amendment inserted "and in the Uniform Commercial Code."

Attachment to Realty

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the improvement was so attached that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. Sanders v. Butte Motor Co., 142 M 524, 385 P 2d 263.

67-1303. (6821) **Sudden removal of bank.**

References

Cited in McCafferty v. Young, — M —, 397 P 2d 96.

67-1307. (6825) **Fixtures—removal of by tenant.**

Manner of Attachment

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the apartment was so attached that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. Sanders v. Butte Motor Co., 142 M 524, 385 P 2d 263.

CHAPTER 14—ACQUISITION OF PERSONAL PROPERTY BY ACCESSION —UNION OF PARTS

Section 67-1410. Uniform Commercial Code—applicability.

67-1410. Uniform Commercial Code—applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section 67-1602.1. Joint tenancy created by direct conveyance.

67-1602.1. Joint tenancy created by direct conveyance. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the

names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

History: En. Sec. 1, Ch. 208, L. 1963.

Title of Act

An act to provide that a joint tenancy, ownership of property may be established by conveyance or transfer of such property without the necessity of transfer to or through any third person.

67-1607. (6865) What easements pass with property.

Conveyance of Servient Tenement

The doctrine of implied easements by reservation as set forth in this section will apply where the servient tenement is severed and conveyed but the dominant tenement is retained by the grantor. Spaeth v. Emmett, 142 M 231, 383 P 2d 812.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER

67-1702 to 67-1704. (6878 to 6880) Repealed.

Repeal

These sections (Secs. 1531, 1540, 1541, Civ. C. 1895), relating to the transfer of personal property by sale, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

67-1706. (6882) Gifts defined.

Shares of Stock

Stocks which had been purchased by the deceased with his own funds and had been issued jointly to him and his son and daughter with right of survivorship and to son and daughter as tenants in common, deposited in safety deposit boxes rented in the names of the owners who had inspected the stock in the safety deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. Marans v. Newland, 141 M 32, 374 P 2d 721, 735.

67-1707. (6883) Gift—how made.

References

Cited in Marans v. Newland, 141 M 32, 374 P 2d 721, 722, 735.

CHAPTER 19—PRINCIPAL AND INCOME ACT

Section 67-1912. Expenses—apportionment.

67-1912. Expenses—apportionment. (1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation annually computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in section 67-1911, shall be paid out of principal, subject to the provisions of subsection (2) of section 67-1911.

(2) All other expenses, including trustees' final termination commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any

action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal under the terms of subsection (2) of section 67-1903 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection (2), the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

History: En. Sec. 12, Ch. 277, L. 1959; amd. Sec. 1, Ch. 134, L. 1965.

Amendment

The 1965 amendment substituted "annually" for "except commissions" following "trustees' compensation" in the first sentence of subsection (1); and inserted "final termination" following "including trustees'" near the beginning of subsection (2).

CHAPTER 20—SURVEYS AND CO-ORDINATES

Section 67-2001. Corner recordation—citation of act.
67-2002. Purpose of act.
67-2003. Definitions.
67-2004. Filing of corner record required.
67-2005. Filing permitted as to any property corner.
67-2006. Form to be prescribed by board.
67-2007. County clerk shall receive, file and cross reference.
67-2008. Surveyor must rehabilitate monuments.
67-2009. Corner records to be certified.
67-2010. Filing of corner records on locations made before effective date.
67-2011. Co-ordinate system adopted—designation—division of state into zones.
67-2012. Designation of zonal systems.
67-2013. Use of x- and y-co-ordinates.
67-2014. Descriptions of tracts lying across zone boundaries.
67-2015. Technical description of zones—stations marked on ground.
67-2016. Proximity to station required for use of co-ordinates in recorded instrument.
67-2017. References to Montana Co-ordinate System.
67-2018. Public land survey descriptions prevail.
67-2019. Reliance on co-ordinate system not required of purchaser or mortgagee.

67-2001. Corner recordation—citation of act. This act may be cited as the "Corner Recordation Act of Montana."

History: En. Sec. 1, Ch. 202, L. 1963.

Title of Act

An act requiring and providing for filing of corner records containing information on public land survey corners by a licensed land surveyor; defining terms; providing for filing and filing fees, and making records available to the public; allowing licensed land surveyors to file information on any property corner; requiring surveyors to reconstruct and perpetuate monuments of public land survey corners; directing that unconstitutionality of a part of this act shall not affect or impair the remainder, and repealing all acts and parts of acts inconsistent herewith.

67-2002. Purpose of act. It is the purpose of this act to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification of ownerships; and thereby eliminating the repeated necessity for re-establishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963.

67-2003. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(4) A "corner," unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under the Montana Professional Engineers Registration Act and has a paid up license for that calendar year, or who is authorized under the Montana Professional Engineers Registration Act to practice land surveying.

(9) The "board" is the state board of registration for professional engineers and land surveyors.

History: En. Sec. 3, Ch. 202, L. 1963.

67-2004. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal and file with the county clerk and recorder of the county where the corner is situated, a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, re-established, monumented, re-monumented, restored, rehabilitated, perpetuated or used as control in any survey by such surveyor, and within ninety (90) days thereafter, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this act.

History: En. Sec. 4, Ch. 202, L. 1963.

67-2005. Filing permitted as to any property corner. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963.

67-2006. Form to be prescribed by board. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963.

67-2007. County clerk shall receive, file and cross reference. (1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the said corner record is filed shall be placed by the clerk near that same corner on a cross index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to recording a townsite map of one (1) lot.

History: En. Sec. 7, Ch. 202, L. 1963.

67-2008. Surveyor must rehabilitate monuments. In every case where a corner record of a public land survey corner is required to be filed under

the provisions of this act, the surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner, so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963.

67-2009. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana the certificate may be signed by the survey party chief, making the survey and approved, signed and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963.

67-2010. Filing of corner records on locations made before effective date. Corner records may be filed concerning corners established, re-established or restored before the effective date of this act.

History: En. Sec. 10, Ch. 202, L. 1963.

Separability Clause

Section 11 of Ch. 202, Laws 1963 read "Severability of provisions. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 202, Laws 1963 repealed all acts and parts of acts inconsistent therewith.

67-2011. Co-ordinate system adopted—designation—division of state into zones. The system of plane co-ordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the state of Montana is hereafter to be known and designated as the "Montana Co-ordinate System."

For the purpose of the use of this system the state is divided into a "North Zone," and "Central Zone," and a "South Zone."

The area now included in the following counties shall constitute the North Zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, McCone, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

The area now included in the following counties shall constitute the Central Zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

The area now included in the following counties shall constitute the South Zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

History: En. Sec. 1, Ch. 232, L. 1965.

Title of Act

An act to describe, define, and officially adopt a system of co-ordinates for designating and stating the positions of points on the surface of the earth within Montana.

67-2012. Designation of zonal systems. As established for use in the North Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, North Zone."

As established for use in the Central Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, Central Zone."

As established for use in the South Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, South Zone."

History: En. Sec. 2, Ch. 232, L. 1965.

67-2013. Use of x- and y-co-ordinates. The plane co-ordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-co-ordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-co-ordinate," shall give the position in a north-and-south direction. These co-ordinates shall be made to depend upon and conform to the co-ordinates, on the Montana Co-ordinate System, of the triangulation and traverse stations of the United States Coast and Geodetic Survey within the state of Montana, as those co-ordinates have been determined by the said survey.

History: En. Sec. 3, Ch. 232, L. 1965.

67-2014. Descriptions of tracts lying across zone boundaries. When any tract of land to be defined by a single description extends from one into another of the above co-ordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: En. Sec. 4, Ch. 232, L. 1965.

67-2015. Technical description of zones—stations marked on ground. (a) For purposes of more precisely defining the Montana Co-ordinate System, the following description by the United States Coast and Geodetic Survey is adopted:

The Montana Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51′ and 48° 43′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 47° 00′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet and y = 0 feet.

The Montana Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27′ and 47° 53′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 45° 50′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet and y = 0 feet.

The Montana Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52′ and 46° 24′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 47° 00′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet and y = 0 feet.

(b) The position of the Montana Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first-order and second-order work, whose positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Montana Co-ordinate System.

History: En. Sec. 5, Ch. 232, L. 1965.

67-2016. Proximity to station required for use of co-ordinates in recorded instrument. No co-ordinates based on the Montana Co-ordinate System, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in section 5 [67-2015] of this act; provided that said one-half mile limitation may be modified by a duly authorized state agency to meet local conditions.

History: En. Sec. 6, Ch. 232, L. 1965.

67-2017. References to Montana Co-ordinate System. The use of the term "Montana Co-ordinate System" on a map, report of survey, or other document, shall be limited to co-ordinates based on the Montana Co-ordinate System as defined in this act.

History: En. Sec. 7, Ch. 232, L. 1965.

67-2018. Public land survey descriptions prevail. Whenever co-ordinates based on the Montana Co-ordinate System are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by co-ordinates shall be construed as supplemental to the basic description of such subdivision, line or corner contained in

the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line or corner of the United States public land surveys shall prevail over the description by co-ordinates.

History: En. Sec. 8, Ch. 232, L. 1965.

67-2019. Reliance on co-ordinate system not required of purchaser or mortgagee. Nothing contained in this act shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana Co-ordinate System.

History: En. Sec. 9, Ch. 232, L. 1965.

Separability Clause

Section 10 of Ch. 232, Laws 1965 read "If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid portion, and to this end the provisions of the act are declared to be severable."

CHAPTER 21—SALE OR LEASE OF SUBDIVIDED LANDS

Section 67-2101. Definition of terms.
67-2102. Rules and regulations.
67-2103. Notice of intention to offer subdivided lands—contents of notice.
67-2104. Fee for filing of notice of intention.
67-2105. Additional information required by commissioner.
67-2106. Fee for filing of questionnaire—disposition of fees.
67-2107. Investigation of subdivisions—powers of commissioner.
67-2108. Findings not to be used in advertising.
67-2109. Blanket encumbrance defined.
67-2110. Required provisions for protection of purchasers and lessees.
67-2111. Contracts for sale of real property in subdivisions—required contents.
67-2112. Notice of multiple sales or leases to one purchaser or lessee.
67-2113. Inspection of records by commissioner—notice of change of address or change of depository.
67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings.
67-2115. Accrual of cause of action for violation.
67-2116. Misdemeanors enumerated.

67-2101. Definition of terms. The word "subdivision" and "subdivided lands" as used in this act shall mean any tract of land which is hereafter divided into five (5) or more parcels, any parcel of which is less than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

History: En. Sec. 1, Ch. 191, L. 1963.

Title of Act

An act defining "subdivision" and "subdivided lands"; providing for the regulation, supervision and control of subdivisions by the state real estate commissioner and defining his duties and powers relative thereto; and providing a penalty for the violation of this act.

67-2102. Rules and regulations. The state real estate commissioner hereafter referred to as the "commissioner" may make and adopt such rules and regulations as are reasonably necessary for the enforcement of this act.

History: En. Sec. 2, Ch. 191, L. 1963.

67-2103. Notice of intention to offer subdivided lands—contents of notice. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the state real estate commissioner in writing of his intention to sell or lease such offering.

The notice of intention shall contain the following information.

(a) The name and address of the owner.

(b) The name and address of the subdivider.

(c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.

(d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.

(f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

(g) Copies of any and all advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the said property, or an interest therein, when said material is or might be circulated outside of this state.

(h) Such other information as the owner, his agent or subdivider, may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963.

67-2104. Fee for filing of notice of intention. A filing fee of fifty dollars ($50) shall accompany the notice of intention provided for in section 3 [67-2103] of this act.

History: En. Sec. 4, Ch. 191, L. 1963.

67-2105. Additional information required by commissioner. After receiving the notice of intention, the commissioner may require such additional information concerning the project as he deems necessary, for which purpose he may prepare a questionnaire for the owner, his agent or subdivider, to answer.

History: En. Sec. 5, Ch. 191, L. 1963.

67-2106. Fee for filing of questionnaire — disposition of fees. The questionnaire as provided for in section 5 [67-2105] of this act shall be accompanied by a filing fee of one hundred dollars ($100). All fees and charges provided for by this act shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked

revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in the administration of this act when such claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963.

67-2107. Investigation of subdivisions—powers of commissioner. The state real estate commissioner may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of such investigation, the commissioner may:

1. Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

2. Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

3. Require evidence of compliance with the requirements of appropriate authorities.

4. Require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963.

67-2108. Findings not to be used in advertising. It shall be unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the commissioner as provided for in this act.

History: En. Sec. 8, Ch. 191, L. 1963.

67-2109. Blanket encumbrance defined. For the purpose of this act, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

History: En. Sec. 9, Ch. 191, L. 1963.

67-2110. Required provisions for protection of purchasers and lessees. It shall be unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the state real estate commissioner until: 1. The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: 2. A proper release is obtained from any such blanket encumbrance, or: 3. Either the owner, subdivider, pur-

chaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the commissioner until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(c) A bond in the amount of twenty-five hundred dollars ($2,500) to the state of Montana is furnished to the state real estate commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, who shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; provided, however, that if such purchaser or lessee, by reason of default, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963.

67-2111. Contracts for sale of real property in subdivisions—required contents. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this act, shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: En. Sec. 11, Ch. 191, L. 1963.

67-2112. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased or sold to another, or, when an interest therein is acquired by one owner, lessee or optionee, the state real estate commissioner shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963.

67-2113. Inspection of records by commissioner—notice of change of address or change of depository. Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the state real estate commissioner and the commissioner shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963.

67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings. Whenever in the opinion of the state real estate commissioner any person has or is violating, or is about to violate, any of the provisions of this act, the commissioner may order the person to desist and refrain

from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the commissioner may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the commissioner is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

The hearing upon the cease, desist and refrain order shall be held in the same manner and under the same requirements and conditions as is provided in section 66-1917, Revised Codes of Montana, 1947.

History: En. Sec. 14, Ch. 191, L. 1963.

67-2115. Accrual of cause of action for violation. For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this act, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property sold or leased in violation of this act and which describes a lot or parcel so wrongfully sold or leased.

This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963.

67-2116. Misdemeanors enumerated. The following acts are misdemeanors:

(a) The willful violation or failure to comply with any of the provisions of this act.

(b) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the state real estate commissioner.

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner or subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act.

(d) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

History: En. Sec. 16, Ch. 191, L. 1963.

Repealing Clause

Section 17 of Ch. 191, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 18 of Ch. 191, Laws 1963 read "If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Effective Date

Section 19 of Ch. 191, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

Section 67-2201. Definitions and use of terms.
67-2202. Property held by banking or financial organizations.
67-2203. Unclaimed funds held by life insurance corporations.
67-2204. Deposits and refunds held by utilities.
67-2205. Undistributed dividends and distributions of business associations.
67-2206. Property of business associations and banking or financial organizations held in course of dissolution.
67-2207. Property held by fiduciaries.
67-2208. Property held by state courts and public officers and agencies.
67-2209. Miscellaneous personal property held for another person.
67-2210. Reciprocity for property presumed abandoned or escheated under the laws of another state.
67-2211. Report of abandoned property.
67-2212. Notice and publication of lists of abandoned property.
67-2213. Payment or delivery of abandoned property.
67-2214. Relief from liability by payment or delivery.
67-2215. Income accruing after payment or delivery.
67-2216. Periods of limitation not a bar.
67-2217. Sale of abandoned property.
67-2218. Deposit of funds.
67-2219. Claim for abandoned property paid or delivered.
67-2220. Determination of claims.
67-2221. Judicial action upon determinations.
67-2222. Election to take payment or delivery.
67-2223. Examination of records.
67-2224. Proceeding to compel delivery of abandoned property.
67-2225. Penalties.
67-2226. Rules and regulations.
67-2227. Effect of laws of other states.
67-2228. Severability.
67-2229. Uniformity of interpretation.
67-2230. Short title.

67-2201. Definitions and use of terms. As used in this act, unless the context otherwise requires:

(a) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

(b) "Business association" means any corporation, other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, co-operative bank, or investment company engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History: En. Sec. 1, Ch. 244, L. 1963.

Title of Act

An act relating to the disposition of unclaimed property and making uniform the law with reference thereto; making provision for classifying such property as abandoned and setting up provisions of law for handling such property so as to protect the interests of the original owners, relieve the holders of annoyance, expense and liability, preclude multiple liability, and preserve any windfalls that may result from abandonment to the state of Montana; providing that the funds becoming available to the state under the provisions of this act shall be deposited in the public school fund; and providing penalties for violations of this act.

67-2202. Property held by banking or financial organizations. The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven (7) years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven (7) years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within

seven (7) years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven (7) years from the date on which the lease or rental period expired.

History: En. Sec. 2, Ch. 244, L. 1963.

67-2203. Unclaimed funds held by life insurance corporations. (a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven (7) years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven (7) years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History: En. Sec. 3, Ch. 244, L. 1963.

67-2204. Deposits and refunds held by utilities. The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the date it became payable in accordance with the final determination or order providing for the refund.

History: En. Sec. 4, Ch. 244, L. 1963.

67-2205. Undistributed dividends and distributions of business associations. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven (7) years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History: En. Sec. 5, Ch. 244, L. 1963.

67-2206. Property of business associations and banking or financial organizations held in course of dissolution. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two (2) years after the date for final distribution, is presumed abandoned.

History: En. Sec. 6, Ch. 244, L. 1963.

67-2207. Property held by fiduciaries. All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven (7) years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state; or

(b) If it is held by a business association, banking organization, or financial organization doing business in this state, but not organized under the laws of or created in this state, and the records of the business association, banking organization, or financial organization indicate

that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by another person.

History: En. Sec. 7, Ch. 244, L. 1963.

67-2208. Property held by state courts and public officers and agencies. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven (7) years is presumed abandoned.

History: En. Sec. 8, Ch. 244, L. 1963.

67-2209. Miscellaneous personal property held for another person. All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven (7) years after it became payable or distributable is presumed abandoned.

History: En. Sec. 9, Ch. 244, L. 1963.

67-2210. Reciprocity for property presumed abandoned or escheated under the laws of another state. If specific property which is subject to the provisions of sections 2, 5, 6, 7 and 9 [67-2202, 67-2205, 67-2206, 67-2207 and 67-2209] is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History: En. Sec. 10, Ch. 244, L. 1963.

67-2211. Report of abandoned property. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of three dollars ($3) or more presumed abandoned under this act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due,

except that items of value under three dollars ($3) each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten-year period preceding its effective date.

History: En. Sec. 11, Ch. 244, L. 1963.

67-2212. Notice and publication of lists of abandoned property. (a) Within one hundred twenty (120) days from the filing of the report required by section 11 [67-2211], the state treasurer shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, or person listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

(c) The state treasurer is not required to publish in such notice any item of less than twenty-five dollars ($25) unless he deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 11 [67-2211], the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars ($25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

History: En. Sec. 12, Ch. 244, L. 1963.

67-2213. Payment or delivery of abandoned property. Every person who has filed a report as provided by section 11 [67-2211] shall within twenty (20) days after the time specified in section 12 [67-2212] for claiming the property from the holder pay or deliver to the state treasurer all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 12 [67-2212], or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963.

67-2214. Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state treasurer, the state shall assume custody and shall be responsible for the safekeeping

thereof. Any person who pays or delivers abandoned property to the state treasurer under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state treasurer pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state treasurer shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state treasurer pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state treasurer was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state treasurer shall refund to such holder the amount of such second payment not in excess of the amount paid to the state treasurer under this act.

History: En. Sec. 14, Ch. 244, L. 1963.

67-2215. Income accruing after payment or delivery. When property is paid or delivered to the state treasurer under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963.

67-2216. Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state treasurer.

History: En. Sec. 16, Ch. 244, L. 1963.

67-2217. Sale of abandoned property. (a) All abandoned property other than money delivered to the state treasurer under this act shall within one (1) year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The state treasurer may decline highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the state treasurer pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claim-

ing through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963.

67-2218. Deposit of funds. (a) All funds received under this act, including the proceeds from the sale of abandoned property under section 17 [67-2217], shall forthwith be deposited by the state treasurer in the public school fund of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars ($25,000) from which he shall make prompt payment of claims allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school fund, the state treasurer may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963.

67-2219. Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer.

History: En. Sec. 19, Ch. 244, L. 1963.

67-2220. Determination of claims. (a) The state treasurer shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963.

67-2221. Judicial action upon determinations. Any person aggrieved by a decision of the state treasurer or as to whose claim the state treasurer has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state treasurer or within one hundred eighty (180) days from the filing of the claim if the state treasurer fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963.

67-2222. Election to take payment or delivery. The state treasurer, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: En. Sec. 22, Ch. 244, L. 1963.

67-2223. Examination of records. The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

History: En. Sec. 23, Ch. 244, L. 1963.

67-2224. Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state treasurer as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963.

67-2225. Penalties. (a) Any person who willfully fails to render any report or perform other duties required under this act shall be punished by a fine of fifty dollars ($50) for each day such report is withheld, but not more than one thousand dollars ($1,000).

(b) Any person who willfully refuses to pay or deliver abandoned property to the state treasurer as required under this act shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963.

67-2226. Rules and regulations. The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963.

67-2227. Effect of laws of other states. This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this act.

History: En. Sec. 27, Ch. 244, L. 1963.

67-2228. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: En. Sec. 28, Ch. 244, L. 1963.

67-2229. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 29, Ch. 244, L. 1963.

67-2230. Short title. This act may be cited as the "Uniform Disposition of Unclaimed Property Act."

History: En. Sec. 30, Ch. 244, L. 1963.

CHAPTER 23—UNIT OWNERSHIP ACT

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67-2301. Short title. Sections 2 to 42 [67-2302 to 67-2342] of this act may be cited as the "Unit Ownership Act."

History: **En. Sec. 1, Ch. 120, L. 1965.**

Title of Act

An act providing for the unit ownership of multiple-unit buildings, and to be cited as the Unit Ownership Act.

67-2302. Definition of terms. As used in sections 2 to 42 [67-2302 to 67-2342] of this act, unless the context requires otherwise:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by sections 29 and 31 [67-2329 and 67-2331] of this act, or by the declaration or the bylaws of the particular condominium.

(5) "Declaration" means the instrument by which the property is submitted to the provisions of section 2 to 42 [67-2302 to 67-2342] of this act.

(6) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) The land on which the building is located except any portion thereof included in a unit or made a limited common element by the declaration;

(b) The foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of the building necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(8) "Majority" or "Majority of the unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50 %) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(9) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(10) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(11) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(12) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(13) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(14) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state.

History: En. Sec. 2, Ch. 120, L. 1965.

67-2303. Application of act—recording of declaration. In order to submit any property to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, the owner thereof shall record a declaration in the office of the recording officer of the county in which such property is located. The declaration shall be executed in accordance with section 14 [67-2314] of this act and acknowledged by the owner of the property.

History: En. Sec. 3, Ch. 120, L. 1965.

67-2304. Status of the unit. While the property is submitted to sections 2 to 42 [67-2302 to 67-2342] of this act, a unit in the building may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: En. Sec. 4, Ch. 120, L. 1965.

67-2305. Ownership of unit. Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

History: En. Sec. 5, Ch. 120, L. 1965.

67-2306. Common elements—interest of unit owner. Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value. The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

History: En. Sec. 6, Ch. 120, L. 1965.

67-2307. Common elements—undivided interest not separated from unit. (1) The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(2) The common elements shall remain undivided and no unit owner shall bring any action for partition or division of any part thereof, except as provided in section 36 [67-2336] of this act. Any covenant to the contrary is void.

History: En. Sec. 7, Ch. 120, L. 1965.

67-2308. Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentage of undivided interest of each in the common elements.

History: En. Sec. 8, Ch. 120, L. 1965.

67-2309. Certain work prohibited. A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

History: En. Sec. 9, Ch. 120, L. 1965.

67-2310. Common elements—use by unit owner. Each unit owner may use the common elements in accordance with the purposes for which they are intended, but may not hinder or encroach upon the lawful rights of the other unit owners.

History: En. Sec. 10, Ch. 120, L. 1965.

67-2311. Maintenance, repair and replacement of common elements. (1) The necessary work of maintenance, repair and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair or replacement of the common elements, or

to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

History: En. Sec. 11, Ch. 120, L. 1965.

67-2312. Waiver of use of common elements—abandonment of unit. No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

History: En. Sec. 12, Ch. 120, L. 1965.

67-2313. Compliance with covenants — bylaws — administrative provisions. Each unit owner shall comply with the bylaws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.

History: En. Sec. 13, Ch. 120, L. 1965.

67-2314. Contents of declaration. A declaration shall contain:

(1) A description of the land.

(2) The name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units and the principal materials of which it is constructed.

(3) The unit designation, location, approximate area of each unit and any other data necessary for proper identification.

(4) A description of the general common elements and the percentage of the interest of each unit owner therein.

(5) A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage.

(6) A statement of the use for which the building and each of the units is intended.

(7) The name of a person to receive service of process in the cases provided in section 38 [67-2338] of this act, and the residence or place of business of such person which shall be within the county in which the property is located.

(8) Any other details regarding the property that the person executing the declaration considers desirable.

History: En. Sec. 14, Ch. 120, L. 1965.

67-2315. Preliminary declaration. A preliminary declaration, setting forth as many of the particulars required by section 14 [67-2314] of this act as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by section 14 [67-2314] of this act.

History: En. Sec. 15, Ch. 120, L. 1965.

67-2316. **Name of property—similarity prohibited.** No property shall bear a name using a word which is the same as, similar to or pronounced the same as, a word in the name of any other property or subdivision in the same county, except for the words "apartment," "motel," "building," "court," "place," or similar words.

History: En. Sec. 16, Ch. 120, L. 1965.

67-2317. **Approval of declaration before recording.** Before a declaration may be recorded, it must be approved by the county assessor of the county in which the property is located. No declaration shall be approved unless:

(1) The name is proper so as to comply with section 16 [67-2316] of this act; and

(2) All taxes and assessments due and payable have been paid.

History: En. Sec. 17, Ch. 120, L. 1965.

67-2318. **Recording of declaration.** When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the county assessor.

History: En. Sec. 18, Ch. 120, L. 1965.

67-2319. **Floor plans recorded with declaration.** Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965.

67-2320. **Bylaws—adoption—recording—amendment.** (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by seventy-five per cent (75 %) of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

History: En. Sec. 20, Ch. 120, L. 1965.

67-2321. **Contents of bylaws.** The bylaws shall provide for:

(1) The election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at

least one-third (1/3) of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent.

(2) The method of calling meetings of the unit owners and the percentage, if other than a majority as defined by subsection (8) of section 2 [67-2302] of this act, that shall constitute a quorum.

(3) The election of a chairman, a secretary and a treasurer.

(4) The maintenance, upkeep and repair of the common elements and payment for the expense thereof including the method of approving payment vouchers.

(5) The employment of personnel necessary for the maintenance, upkeep and repair of the common elements.

(6) The manner of collecting from the unit owners their share of the common expenses.

(7) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(8) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(9) The method of amending the bylaws subject to subsection (3) of section 20 [67-2320] of this act.

History: En. Sec. 21, Ch. 120, L. 1965.

67-2322. Contents of deed of unit. The deed of a unit shall contain:

(1) A description of the land, the name of the property, and the recording index numbers and date of recording of the declaration.

(2) The unit designation of the unit.

(3) The use for which the unit is intended.

(4) The percentages of undivided interest in the common elements appertaining to the unit.

(5) Any further details the grantor and grantee may consider desirable.

History: En. Sec. 22, Ch. 120, L. 1965.

67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance. At the time of the first conveyance of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: En. Sec. 23, Ch. 120, L. 1965.

67-2324. Liens against units—release from lien—effect of part payment. (1) Subsequent to recording a declaration and while the property remains subject to sections 2 to 42 [67-2302 to 67-2342] of this act, no lien

shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

(2) No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor or subcontractor, shall be the basis for the filing of a mechanic's or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

(3) If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the percentage established in the declaration. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common element appertaining thereto not so released by payment, satisfaction or discharge.

History: En. Sec. 24, Ch. 120, L. 1965.

67-2325. Records of receipts and expenditures—availability for examination. The manager shall keep detailed accurate records in chronological order, of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of week days.

History: En. Sec. 25, Ch. 120, L. 1965.

67-2326. Claim for common expenses—priority of lien—contents of claim—filing and recording. (1) Whenever an association of unit owners, acting through its manager, furnishes to a unit any services, labor or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) Tax and assessment liens, and

(b) A first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing a true statement of the account

due for such common expenses after deducting all just credits and offsets; the name of the owner of the unit, or reputed owner, if known; a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under section 45-501. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

History: En. Sec. 26, Ch. 120, L. 1965.

67-2327. Unpaid common expenses—foreclosure of lien or action for money judgment. The proceedings to foreclose liens created by section 26 [67-2326] of this act shall conform as nearly as possible to the proceedings to foreclose liens created by section 45-501. The lien may be enforced by the manager acting on behalf of the association of unit owners. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

History: En. Sec. 27, Ch. 120, L. 1965.

67-2328. Foreclosure of lien for unpaid common expenses—payment of rent—appointment of receiver—bid by manager at foreclosure sale. In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent. The manager, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

History: En. Sec. 28, Ch. 120, L. 1965.

67-2329. Foreclosure of first mortgage or trust indenture—liability of purchaser at foreclosure sale for unpaid share of common expenses. Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, such purchaser, his successors and assigns, shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners including such purchaser, his successors and assigns.

History: En. Sec. 29, Ch. 120, L. 1965.

67-2330. Joint and several liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit; the grantee shall be jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the amounts paid by the grantee therefor. However,

upon request of a prospective purchaser the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case shall not be liable for, nor shall the unit when conveyed be subject to, a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.

History: En. Sec. 30, Ch. 120, L. 1965.

67-2331. **Insurance of building.** The manager, as trustee for the unit owners, shall, if required by the declaration, the bylaws or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, without prejudice to the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building are common expenses.

History: En. Sec. 31, Ch. 120, L. 1965.

67-2332. **Removal of property from the provisions of the Unit Ownership Act—transfer of liens.** (1) All of the unit owners may remove a property from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(2) The tax collector for any taxing unit having a lien, for taxes or assessments, shall have authority to consent to such a transfer of any tax or assessment lien.

History: En. Sec. 32, Ch. 120, L. 1965.

67-2333. **Obsolete property—renewal and restoration—sale—removal from provisions of the Unit Ownership Act.** Ninety per cent (90 %) of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If ninety per cent (90 %) of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If ninety per cent (90 %) of the unit owners agree to sell the property, the property shall be considered removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 33, Ch. 120, L. 1965.

67-2334. **Damage to property—decision not to repair or rebuild—removal from the provisions of the Unit Ownership Act.** If within sixty days (60) after the date of the damage to or destruction of all or part of the property, the association of unit owners does not decide to repair, reconstruct or rebuild, the property shall be considered removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 34, Ch. 120, L. 1965.

67-2335. **Removal of property from the provisions of the Unit Ownership Act—ownership in common—liens.** If the property is removed from

the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, as provided by sections 32, 33 and 34 [67-2332, 67-2333 and 67-2334] of this act, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

History: En. Sec. 35, Ch. 120, L. 1965.

67-2336. **Removal of property from the provisions of the Unit Ownership Act—action for partition—disposition of net proceeds of sale.** If the property is removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, as provided in sections 32, 33 and 34 [67-2332, 67-2333 and 67-2334] of this act, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

History: En. Sec. 36, Ch. 120, L. 1965.

67-2337. **Removal no bar to subsequent resubmission.** The removal of the property from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, shall in no way bar its resubmission.

History: En. Sec. 37, Ch. 120, L. 1965.

67-2338. **Actions.** Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit. Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process. At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of ten dollars ($10), which shall be a taxable disbursement.

History: En. Sec. 38, Ch. 120, L. 1965.

67-2339. **Change of agent for service of process.** If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in section 38 [67-2338] of this act, it shall record an amendment to the declaration. The amendment shall be certified by the presiding officer and the secretary of the association of unit owners, and shall state the name of the successor with his residence or place of business as required by

subsection (7) of section 14 [67-2314] of this act and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

History: En. Sec. 39, Ch. 120, L. 1965.

67-2340. Separate taxation. (1) Each unit with its percentage of undivided interest in the common elements shall be considered a parcel of real property subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. Neither the building, the property nor any of the common elements shall be considered a parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the county assessor may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

History: En. Sec. 40, Ch. 120, L. 1965.

67-2341. Exemptions. Exemptions from executions and real property taxes apply to the owner of each unit or to the individual units as the case may be.

History: En. Sec. 41, Ch. 120, L. 1965.

67-2342. Appraisal and assessment of units. The state board of equalization shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 42, Ch. 120, L. 1965.

TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

Chapter 3. Contracts between municipal corporations, counties and public agencies, 68-301.
4. Cost of service, how borne—change of status—membership—retirement fund, 68-405.
5. Board of administration—powers and duties, 68-501.
9. Service and disability retirement allowances, 68-901.
11. Death benefits, 68-1101.
14. Game wardens' retirement system, 68-1401 to 68-1429.

CHAPTER 3—CONTRACTS BETWEEN MUNICIPAL CORPORATIONS, COUNTIES AND PUBLIC AGENCIES

Section 68-301. Contracts with municipal corporations—election by employee to participate.

68-301. Contracts with municipal corporations—election by employee to participate. After receiving from the board of administration, a quotation of the approximate contribution provided for in section 68-602, any municipal corporation in the state may participate in the public employees' retirement system, making its employees members of said system, by contract entered into between the legislative body of said municipal corporation and the board of administration of the said retirement system, subject to the provisions of this act. Said contract may include any provisions consistent with this act, necessary in the administration of the retirement system as it affects said employees and municipal corporation. The approval and termination of said contract shall be subject to the following provisions, in addition to the other provisions of this act:

(a) to (c). * * * [Same as parent volume.]

(d) Any employee who has been in the employment of an incorporated city or town of this state continuously for a period of at least two (2) years, and which incorporated city or town is not participating in the public employees' retirement system of this state, may advise the legislative body of the city or town, in writing, that he wishes to participate in such system. The legislative body shall, within thirty (30) days after receipt of such written request, adopt the resolution of intention and take such other action as provided for in subsection (a) of this act.

History: En. Sec. 6, Ch. 212, L. 1945; amd. Sec. 1, Ch. 119, L. 1965.

Amendment

The 1965 amendment added subsection (d).

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—MEMBERSHIP—RETIREMENT FUND

Section 68-405. Fund abolished.

68-405. Fund abolished. The "public employees' retirement fund" is hereby abolished. All contributions paid into the retirement system as

the employer agency portion from the state, counties, cities, towns, school districts or other public agencies or political subdivisions shall constitute a pooled or mingled account in the agency fund for payment of all claims made and approved. Whenever the words "retirement fund" appear in this act they shall be taken to mean the public employees' retirement account in the agency fund.

History: En. Sec. 13, Ch. 212, L. 1945; amd. Sec. 4, Ch. 297, L. 1947; amd. Sec. 197, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

Section 68-501. Board of administration.

68-501. Board of administration. The board of administration shall consist of five (5) members appointed by the governor, three (3) of which members shall be public employees and shall be members of the retirement system, and two (2) of which shall be members at large. Terms of office shall be for five (5) years provided, however, that those first appointed after this act takes effect shall be for terms, respectively, of one (1), two (2), three (3), four (4), and five (5) years but their successors shall hold office for terms of five (5) years; provided not more than one (1) employee member of the retirement board shall be an employee of the same department, bureau or agency of the state or contracting public agency. Members of the board shall be paid their actual and necessary expenses and those members of the board who are not members of the public employees' retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of ten dollars ($10.00) per day.

The attorney general is hereby designated legal counsel for the board.

(a) to (e). * * * [Same as parent volume.]

(f) Time during which a member is absent from public service without compensation shall not be allowed in computing service; except that time during which a member is absent from public service by reason of having been ordered on duty with the armed forces of the United States, or by reason of voluntary service by the member in said forces or on ships operated by or for the United States government, or by members assigned directly to the Department of War or Defense for duties pursuant to the national defense efforts, having been granted a leave of absence by the agency, department of state, county or city under which said member is employed for such purpose, either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter shall be considered as time spent in public service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless the member elects to contribute and contributes under the retirement system. Any member so absent and until his return within the said ninety (90) days may resign from the system. Any member so absent shall have the right to contribute to said system, either during his service with the armed forces of the

United States or in the merchant marine of the United States, and ninety (90) days thereafter or upon his return to the state service, at times and in a manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence. If he does so contribute he shall receive credit for public service for such time in the same manner as if he had not been absent from public service. Whenever a member elects to continue his contributions, the state or the contracting city, or county or other agency shall thereupon contribute an amount equal to that which it would have contributed under section 68-1307 or under the contract between the board and the legislative body, as the case may be, if the member had not been absent from state service.

Any member so absent or any member absent from state service by reason of having been ordered by an authorized official of the state of Montana or the United States, to duties outside state service shall be paid upon his request, his accumulated contributions. Such payment shall terminate any election by said member under this section to contribute.

Time during which a member is absent from public service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment, shall be considered as spent in public service, for the purpose of qualification for retirement and death benefits, but not for the calculation of retirement benefits, except as he received compensation, as defined in this act and as distinguished from disability indemnity under the Workmen's Compensation Act during the absence, and then only to the extent of compensation received.

(g) to (l). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 212, L. 1945; amd. Sec. 5, Ch. 297, L. 1947; amd. Sec. 4, Ch. 186, L. 1951; amd. Sec. 1, Ch. 224, L. 1951; amd. Sec. 1, Ch. 225, L. 1953; amd. Sec. 4, Ch. 92, L. 1955; amd. Sec. 1, Ch. 233, L. 1965.

Amendment

The 1965 amendment inserted "or by members assigned directly to the Department of War or Defense for duties pursuant to the national defense efforts, having been granted a leave of absence by the agency, department of state, county or city under which said member is employed for such purpose" after "United States government" in the first sentence of the first paragraph of subd. (f).

Repealing Clause

Section 2 of Ch. 233, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 233, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

Section 68-901. Service retirement allowance.

68-901. Service retirement allowance. A member upon retirement from service is entitled to receive a service retirement allowance which shall consist of:

(a). * * * [Same as parent volume.]

(b) A pension, purchased by the contributions of the state, or the

contracting city, equal to (1) that portion of the annuity purchased by the accumulated normal contributions of the member, or (2) one quarter (¼) of his average final compensation provided his total state service is at least thirty-five (35) years, otherwise, a pension which shall be one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of state service; whichever is greater.

(c) to (f). * * * [Same as parent volume.]

MINIMUM GUARANTEE

(g). * * * [Same as parent volume.]

DISABILITY RETIREMENT

(h) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out of and in the course of employment, the said member shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

(i). * * * [Same as parent volume.]

DISABILITY RETIREMENT ALLOWANCE

(j) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a), (b), (c) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation; provided, however, that for any period of time for which the industrial accident board has awarded compensation to the member, whether or not such compensation is received in weekly payments or in a lump sum, the retirement allowance shall be twenty-five per centum (25%) of his final com-

pensation and at the end of such period of time shall revert to fifty per centum (50%) as provided above.

(k) and (l). * * * [Same as parent volume.]

History: En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951; amd. Sec. 5, Ch. 246, L. 1959; amd. Sec. 1, Ch. 207, L. 1963.

Amendment

The 1963 amendment inserted the designation for clause (1) of subd. (b); added clause (2) and the words "whichever is greater" to subd. (b); deleted second and third paragraphs of subd. (h), for text of which see parent volume; and added the proviso to the second sentence of subd. (j).

Incapacity Not Result of Employment

Where relator suffered from diabetes mellitus, smoker's throat, and arteriosclerosis, it was not an abuse of discretion for the board of administration to find that resulting incapacity was not the result of injury or disease arising out of and in the course of his employment as a construction engineer. State ex rel. Sanders v. Hill, 141 M 558, 381 P 2d 475.

Mandamus

While mandamus may compel the board of administration to act, it may not be used to control its discretion and substitute the judgment of the court for that of the board, and refusal of the board to alter its ruling to fit the holding of the district court was not arbitrary or capricious and would not support the writ. State ex rel. Sanders v. Hill, 141 M 558, 381 P 2d 475.

CHAPTER 11—DEATH BENEFITS

Section 68-1101. Death benefit.

68-1101. Death benefit. Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which death benefit shall be paid to such person or other legal entity as he has nominated by written designation duly executed and filed with the retirement board or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, or (b) who has received a disability retirement allowance as provided for in paragraphs (i) through (l) of section 68-901, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

(a) to (d). * * * [Same as parent volume.]

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary, if a natural person of legal age, may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions; and provided that this provision be retroactive for all members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

(f) The beneficiary shall have ninety (90) days after receipt of notice from the board of administration that he is entitled to a death benefit, to make the elections provided for in paragraphs (c) and (e) above.

History: En. Sec. 26, Ch. 212, L. 1945; amd. Sec. 7, Ch. 186, L. 1951; amd. Sec. 2, Ch. 225, L. 1953; amd. Sec. 9, Ch. 92, L. 1955; amd. Sec. 2, Ch. 207, L. 1963; amd. Sec. 1, Ch. 110, L. 1965.

Amendments

The 1963 amendment substituted "which death benefit shall be paid" before "such person having an insurable interest" in the first paragraph for "which if there is a surviving wife or surviving children under eighteen (18) years of age, shall be paid in monthly installments and to the surviving wife and children as presented therein; otherwise such death benefit shall be paid to his estate, or"; and inserted in the first paragraph the words "or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201."

The 1965 amendment substituted "or other legal entity" for "having an insurable interest in his life" following "such person" in the first paragraph; substituted "if a natural person of legal age" for "nominated by the deceased member" following "beneficiary" in the first sentence of paragraph (e); deleted "named in (e) above" following "beneficiary" at the beginning of paragraph (f); deleted "the right within" following "shall have" and substituted the clause beginning with "after receipt of" and ending with paragraphs (c) and (e) above" for a clause which read "of the member's death to elect to receive a death benefit instead of the benefit designated in (e) above" at the end of paragraph (f).

Separability Clauses

Section 3 of Ch. 207, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Section 2 of Ch. 110, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clauses

Section 4 of Ch. 207, Laws 1963 and Sec. 3 of Ch. 110, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 5 of Ch. 207, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

Section 4 of Ch. 110, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

Section 68-1401. Definition of terms.
68-1402. State game warden defined.
68-1403. Establishment of Montana state game wardens' retirement system.
68-1404. Montana state game wardens' retirement board.
68-1405. Payments into the Montana game wardens' retirement system.
68-1406. Rules and regulations—actuarial data.
68-1407. Membership.
68-1408. State game wardens' retirement account.
68-1409. Payments by contributors.
68-1410. Contributions by the state of Montana.
68-1411. Retirement.
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68-1417. Payments upon death attributable to employment.
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68-1421. Nomination of beneficiary.
68-1422. Service in the armed forces of the United States.
68-1423. Fraud—correction of errors.
68-1424. Restrictions on payments.
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68-1426. Payments under other laws.
68-1427. Optional retirement allowance.
68-1428. Transfer of dormant accounts.
68-1429. State public employees' retirement system, ineligibility of member.

68-1401. Definition of terms. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired state game warden," any person in receipt of a retirement allowance under this act.

"Board," the Montana state game wardens' retirement board.

"Contributor," any person who has accumulated deductions in the account, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana state game wardens' retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years service or more; provided that such contributor has reached the age of fifty-five (55) years.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the Montana fish and game department; provided that all members must retire at age sixty (60).

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 1, Ch. 130, L. 1963.

Title of Act

An act creating and establishing a Montana state game wardens' retirement system; defining the terms "accumulated deductions," "beneficiary," "retired state game warden," "board," "contributor," "final salary," "actuarial equivalent," "account," "involuntary retirement," "member's annuity," "optional retirement age," "retirement age," "retirement allowance," "state annuity," "state game warden"; creating a Montana state game wardens' retirement board; providing for payments into the Montana game wardens' retirement account; providing the board may establish rules and regulations for proper administration, operation and enforcement of this act; defining who shall be members of said retirement system; creating a state game wardens' retirement account; providing for contributions by members of the Montana state game wardens; providing for contributions by the state of Montana; providing for retirement, voluntary retirement, retirement allowance, disability retirement allowance, involuntary retirement allowance, refunds in case of resignation or discharge, payments upon death, payments in case of death from natural causes; providing for monthly payments of retirement allowances; providing for the exemption from taxes and execution of member's annuity; providing for the manner of designating beneficiaries; providing for service in the armed forces of the United States; prohibiting fraud and providing for the manner of correcting errors; providing for restrictions on payments to beneficiaries; providing for the subrogation of the state of Montana to the rights of the members or dependents against certain third parties; providing for payments under other laws; providing for optional retirement allowances; providing that each game warden shall be ineligible to membership in state public employees' retirement system; providing that as to constitutionality the provisions of this act are severable; providing this act shall be in full force and effect from and after its passage and approval; and repealing all acts and parts of acts in conflict herewith.

68-1402. State game warden defined. Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and shall include all warden supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 2, Ch. 130, L. 1963.

68-1403. Establishment of Montana state game wardens' retirement system. A retirement system is hereby established for Montana state game wardens.

History: En. Sec. 3, Ch. 130, L. 1963.

68-1404. Montana state game wardens' retirement board. There is hereby created a Montana state game wardens' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

History: En. Sec. 4, Ch. 130, L. 1963.

68-1405. Payments into the Montana game wardens' retirement system. All contributions by the state fish and game moneys in the earmarked revenue fund and all contributions by the state game wardens as designated by section 1 [68-1401] above, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administra-

tion thereof and the state board of land commissioners as to the investment thereof. Whenever there is on deposit in the Montana state game wardens' retirement account a sum in excess of twenty-five thousand dollars ($25,000), such excess will be invested by the state board of land commissioners as part of the long-term investment fund and any of the account less than twenty-five thousand dollars ($25,000) in amount shall be invested by the state board of land commissioners as part of the short-term investment fund when so directed by the Montana game wardens' retirement board.

History: En. Sec. 5, Ch. 130, L. 1963.

68-1406. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and to the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963.

68-1407. Membership. Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the Montana fish and game department, shall be required to become a member of the retirement system established by this act, on July 1, 1963, and thereafter when first becoming a state game warden. Contributions by members under this act shall commence with the first payroll after July 1, 1963. If any person becomes a state game warden subsequent to July 1, 1963, or shall have been at any time heretofore a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in such capacity.

History: En. Sec. 7, Ch. 130, L. 1963.

68-1408. State game wardens' retirement account. There is hereby created state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to said account. In addition thereto, all moneys any state game warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created and any such state game warden shall be allowed service credit hereunder for any such previous service, including other Montana state, county or city service. The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by state game wardens or as deputy game

wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds.

History: En. Sec. 8, Ch. 130, L. 1963.

68-1409. Payments by contributors. Every member shall be required to contribute into the account a sum equal to seven per cent (7%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account; provided that [for] any member who contributes after twenty-five (25) years of service, the contributor's retirement allowance shall be increased in an amount as calculated on an actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his retirement.

History: En. Sec. 9, Ch. 130, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "for" in the proviso.

68-1410. Contributions by the state of Montana. (a) There shall be paid out of the Montana fish and game moneys in the earmarked revenue fund, monthly, by the state treasurer, a sum equal to seven per cent (7%) of the total amount of each Montana game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act. (b) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana out of the fish and game moneys in the earmarked revenue fund, made on the basis of budgets submitted by the board.

History: En. Sec. 10, Ch. 130, L. 1963.

68-1411. Retirement. Any member in service who has completed at least twenty-five (25) years of creditable service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired; provided that retirement shall be compulsory at age sixty (60).

History: En. Sec. 11, Ch. 130, L. 1963.

68-1412. Voluntary retirement. If a contributor has served twenty (20) years of creditable service as a state game warden, and has reached the age of fifty-five (55) years, he is hereby granted the option and privilege of retiring and, in such case, his retirement allowance shall be proportionately reduced.

History: En. Sec. 12, Ch. 130, L. 1963.

68-1413. Retirement allowance. Upon retirement from service a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of his retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half (½) of his average final salary.

History: En. Sec. 13, Ch. 130, L. 1963.

68-1414. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service

of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided that if such total disability is a direct result of any service to the Montana fish and game department in line of duty, and the contributor has had over ten (10) years of service, then such state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half (½) of his average final salary.

History: En. Sec. 14, Ch. 130, L. 1963.

68-1415. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of an application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 15, Ch. 130, L. 1963.

68-1416. Refunds in case of resignation or discharge. When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 130, L. 1963.

68-1417. Payments upon death attributable to employment. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to fifty per cent (50%) of the final salary of the contributor, less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for more than fifteen (15) years or past the age of sixty-five (65) years, whichever is the greater.

History: En. Sec. 17, Ch. 130, L. 1963.

68-1418. Payments in case of death from natural causes. (a) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 15 [68-1415] above.

History: En. Sec. 18, Ch. 130, L. 1963.

68-1419. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana.

History: En. Sec. 19, Ch. 130, L. 1963.

68-1420. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 130, L. 1963.

68-1421. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

History: En. Sec. 21, Ch. 130, L. 1963.

68-1422. Service in the armed forces of the United States. Any state game warden now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the account; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the account the full amount of such payments upon his return to state game warden status, and such repayments must be made within two (2) years after his return to active state game warden status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 130, L. 1963.

68-1423. Fraud—correction of errors. (a) No person shall knowingly make any false statement or falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system; (b) should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars ($1,000) or suffer imprisonment not exceeding one year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 130, L. 1963.

68-1424. Restrictions on payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for

as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired, or where the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend for as long a time as it sees fit, disbursement of the state annuity.

History: En. Sec. 24, Ch. 130, L. 1963.

68-1425. Subrogation. Where a third person is liable to the member or [any] of his dependents for injury or death, the state shall be subrogated to the right of the dependents against such third person; but only to the extent of the state annuity payable under this act by the state. Any recovery against such third person, in excess of the state annuity theretofore paid or thereafter to be paid by the state shall be paid forthwith to the contributor or the person designated by such contributor.

History: En. Sec. 25, Ch. 130, L. 1963.

Compiler's Note

The compiler inserted the bracketed word "any" in the first sentence.

68-1426. Payments under other laws. All payments provided for in this act are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

History: En. Sec. 26, Ch. 130, L. 1963.

68-1427. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option No. 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 2. Upon his death, one-half (½) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 3. Such other benefit or benefits shall be paid either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963.

68-1428. Transfer of dormant accounts. The board may in its discretion transfer the accumulated deductions of a member to the employer's

account in the Montana state game wardens' retirement account in the agency fund if the member's account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the accumulated deductions shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 28, Ch. 130, L. 1963.

68-1429. State public employees' retirement system, ineligibility of member. Each state game warden shall, after July 1, 1963, become a member of this retirement system and thereafter no state game warden shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to Montana state game wardens.

History: En. Sec. 29, Ch. 130, L. 1963.

Separability Clause

Section 30 of Ch. 130, Laws 1963 read "The provisions of this act are severable, and, if any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

Repealing Clause

Section 31 of Ch. 130, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 32 of Ch. 130, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

TITLE 69—PUBLIC HEALTH AND SAFETY

Chapter 1. State board of health—creation—powers and duties 69-119.
3. Tuberculosis control, 69-317, 69-318.
5. Vital statistics, 69-512, 69-518, 69-536.1, 69-536.2.
8. Establishment of full-time county and district health departments and boards of health authorized, 69-815 to 69-817.
11. Venereal disease control, 69-1122 to 69-1138.
13. Public and other water supplies—control by state board of health, 69-1301, 69-1309, 69-1314, 69-1342, 69-1343, 69-1345.
15. Boiler inspection—engineers license, 69-1516.
18. Public safety in case of fire—fire escapes and apparatus—inspections, 69-1802.
19. Explosives—regulation of manufacture, storage and sale, 69-1910.
23. Cadavers—procurement for teaching anatomical science—autopsies and dissections, 69-2306, 69-2308 to 69-2310.
24. Long-term care facilities, 69-2407 to 69-2421.
29. Licensing and supervision of hospitals and related facilities, 69-2901 to 69-2903, 69-2905 to 69-2908, 69-2910, 69-2911, 69-2915 to 69-2917.
30. Montana Hospital, Medical and Related Facility Survey and Construction Act, 69-3001 to 69-3004, 69-3007 to 69-3010, 69-3012 to 69-3015, 69-3016.1.
32. State board of health—maternal and child health services—educative program—school nurses—supervision by board—authority of counties and school boards—services for crippled children—education for children and adults in use and abuse of narcotics, 69-3203, 69-3206 to 69-3210.
34. Sanitarians, 69-3404.
35. Motorboat and vessel regulation, 69-3502, 69-3505, 69-3508.1, 69-3508.2.
37. Accommodation of handicapped persons in public buildings, 69-3701 to 69-3719.
38. Public swimming pools and bathing places, 69-3801 to 69-3813.
39. Air pollution, 69-3901 to 69-3903.
40. Refuse disposal areas, 69-4001 to 69-4010.

CHAPTER 1—STATE BOARD OF HEALTH—CREATION—POWERS AND DUTIES

Section 69-119. Rules and regulations for transportation of dead bodies.

69-119. (2456) **Rules and regulations for transportation of dead bodies.** The state board of health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practicable, be in conformity with similar rules and regulations now in force in other North American states and countries.

History: En. Sec. 26, Ch. 110, L. 1907; Sec. 1499, Rev. C. 1907; re-en. Sec. 2456 R. C. M. 1921; amd. Sec. 18, Ch. 41, L. 1963.

Amendment

The 1963 amendment deleted from the end of the section a clause reading: "and to this end they may establish a system of licensing embalmers and undertakers."

CHAPTER 3—TUBERCULOSIS CONTROL

Section 69-317. Expenses of removal to facility—charge for maintenance, care and treatment.
69-318. Quarters and facilities.

69-317. **Expenses of removal to facility—charge for maintenance, care and treatment.** The expenses of removal of any person to a facility shall be borne by the county from which such person was committed. These expenses shall be paid from the general fund appropriations of the county or from the funds derived from such as may be designated. The charge for the care, treatment, and maintenance of the person at State Pulmonary Disease Hospital shall be at the rate determined paid for according to existing law.

History: En. Sec. 14, Ch. 259, L. 1959; amd. Sec. 75, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "State Pulmonary Disease Hospital" for "the state sanitarium" in the third sentence.

69-318. **Quarters and facilities.** The state department of institutions shall provide and maintain at the state facility, State Pulmonary Disease Hospital, quarters as may be necessary to carry out the provisions of this act. The counties shall provide and maintain facilities as may be necessary to carry out the provisions of chapter 3, Title 69, R. C. M. 1947.

History: En. Sec. 15, Ch. 259, L. 1959; amd. Sec. 76, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "The state department of institutions" for "The state board of examiners" at the beginning of the section; substituted "State Pulmonary Disease Hospital" for "Montana state tuberculosis sanitarium" in the first sentence; and changed the form of the reference at the end of the section.

CHAPTER 5—VITAL STATISTICS

Section 69-512. Registration of deaths and stillbirths.
69-518. Fees for copies.
69-536.1. Clerks of court to report divorces and annulments—information as to parties.
69-536.2. Judicial information on divorces and annulments.

69-512. **Registration of deaths and stillbirths.** (1) A certificate of every death or stillbirth shall be filed with the local registrar of the district in which the death or stillbirth occurred within three (3) days after the occurrence is known; or if the place of death or stillbirth is not known then with the local registrar of the district in which the body is found within twenty-four (24) hours thereafter. In every instance a certificate shall be filed prior to interment or other disposition of the body.

(2) If a state resident dies in a county in this state where he is a nonresident, the clerk and recorder shall send a certified permanent copy of the death certificate to the clerk and recorder of the county where the deceased was a resident, to be filed with other death certificates.

History: En. Sec. 12, Ch. 44, L. 1943; amd. Sec. 1, Ch. 207, L. 1965.

Amendment

The 1965 amendment designated the previous text as subsection (1) and added subsection (2).

69-518. **Fees for copies.** The board shall prescribe a fee of not less than two dollars ($2.00) to be paid for certified copies of certificates. Subject to sections 69-521, 69-523 and 69-524, the United States bureau of the

census may obtain transcripts, or without payment of fees, certified copies, provided the state is put to no expense in connection therewith.

History: En. Sec. 18, Ch. 44, L. 1943; amd. Sec. 14, Ch. 121, L. 1965.

Amendment

The 1965 amendment substituted "a fee of not less than two dollars ($2.00)" for "the fees if any" near the beginning of the section; and deleted "or for search of the files or records when no certified copy is made" at the end of the first sentence.

69-536.1. Clerks of court to report divorces and annulments—information as to parties. Contemporaneously with the filing of a decree of divorce or annulment of marriage, there shall be submitted by the clerk of court of the district court with whom such action is filed a report of such action on a form prescribed by the state registrar of vital statistics. Said report shall contain information as follows: name, age, birthplace, residence, race or color, occupation and number of previous marriages of each party; the date and place of the marriage of the parties; the number of children under eighteen (18) years of age in the custody of either or both parties and residing with them; and the grounds of such action. Such information shall be supplied to the clerks by the parties to the action or their respective attorneys.

History: En. Sec. 1, Ch. 137, L. 1963.

Title of Act

An act requiring submission of vital statistics information by clerks of the district courts at time of entry of decree of divorce or annulment and providing for transmittal of such information to the state registrar of vital statistics.

69-536.2. Judicial information on divorces and annulments. The clerk of the district court shall indicate upon said form the cause number of the action, the county and the judicial district wherein filed the date of the judgment and to which party granted. The completed form shall be transmitted to the state registrar as provided by section 69-536, R.C.M., 1947.

History: En. Sec. 2, Ch. 137, L. 1963.

CHAPTER 8—ESTABLISHMENT OF FULL-TIME COUNTY AND DISTRICT HEALTH DEPARTMENTS AND BOARDS OF HEALTH AUTHORIZED

Section 69-815. Visiting nurse services may be provided by board.
69-816. Visiting nurse services subject to physician's directions.
69-817. Payment for visiting nurse services—disposition of receipts.

69-815. Visiting nurse services may be provided by board. In any case where a person is confined to his home or usual place of abode under the care of a licensed physician and surgeon and said physician and surgeon determines that such person requires nursing services which can be provided by a duly qualified nurse who visits said person at the direction of said physician and surgeon, said visiting nurse services may be provided by nurses employed by the county, city-county or district board of health.

History: En. Sec. 1, Ch. 174, L. 1965.

Title of Act

An act to provide visiting nurse services to be performed by public health nurses at the direction of licensed physicians and surgeons; providing that county, city-county or district boards of health may accept payment for such services either directly or by contract with the recipients or public agencies; and providing that payments made for visiting nurse services shall be deposited in a special fund to be used to defray the cost of the services.

69-816. Visiting nurse services subject to physician's directions. No visiting nurse services as provided for in this act shall be performed except as directed by a duly licensed physician and surgeon who shall have determined a need for such services. In addition to determining the need for such services in the initial instance, said physician and surgeon directing that such services by [be] performed shall specify the type of services to be performed and the duration of the services.

History: En. Sec. 2, Ch. 174, L. 1965.

69-817. Payment for visiting nurse services—disposition of receipts. Persons who receive visiting nurse services as provided for in this act shall pay for them at rates to be determined by the county, city-county or district board of health which employs the nurses who perform the services provided for in this act. The county, city-county or district board of health may accept payment for such services from persons or public or private agencies on behalf of the recipients, either directly or by contract with such persons or agencies. The amounts of money received from persons to whom such visiting nurse services are rendered shall be deposited in a special fund and used to defray the expense of providing the service.

History: En. Sec. 3, Ch. 174, L. 1965.

Repealing Clause

Section 4 of Ch. 174, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 174, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 11—VENEREAL DISEASE CONTROL

Section 69-1122. State board of health to co-operate with federal authorities in suppression—independent control measures—appointment and compensation of personnel.
69-1123. Acceptance and disbursement of federal moneys.
69-1124. Diseases defined as dangerous to public health—exposure of another unlawful.
69-1125. Records and reports of venereal cases by physician.
69-1126. Quarantine—examination and treatment of suspects.
69-1127. Examination and treatment of prisoners.
69-1128. Notice to local or county health officer of suspected carrier exposing others.
69-1129. Unlicensed persons prohibited from prescribing or recommending cure or alleviation.
69-1130. Certificates of freedom from disease—restrictions on issuance and use.
69-1131. Information and reports confidential.
69-1132. Rules and regulations for control of disease.
69-1133. Penalty for violation of chapter, regulations or orders.
69-1134. Serological test for syphilis.
69-1135. Blood samples from pregnant women to be tested for syphilis.
69-1136. Positive laboratory tests to be reported to state board of health.
69-1137. Report of birth to state whether blood test was made.
69-1138. Use of information—administrative expenditures.

69-1101 to 69-1121. (2562 to 2577). **Repealed.**

Repeal

These sections (Secs. 1, 2, Ch. 86, L. 1919; Secs. 1 to 14, Ch. 106, L. 1919; Sec. 1, Ch. 126, L. 1943; Secs. 1 to 5, Ch. 119, L. 1945; Secs. 12, 13, Ch. 264, L. 1955), relating to venereal disease control, were repealed by Sec. 18, Ch. 107, Laws 1965.

69-1122. State board of health to co-operate with federal authorities in suppression—independent control measures—appointment and compensation of personnel. For the purpose of prevention, control and treatment of venereal diseases, the state board of health shall have authority to co-operate in the state of Montana with the federal public health service created by acts of Congress of the United States, including section 246 under chapter 6A, title 42, United States Code, Annotated, and acts hereafter amendatory thereof and supplemental thereto, and acts of the Congress of the United States appropriating money for such activities, as such appropriations are, from time to time, made by the Congress. The state board of health shall, itself, irrespective of appropriations, if any, made by the Congress to the state for the prevention, control and treatment of venereal diseases, undertake to prevent, control and prescribe treatments for such diseases in such ways and by such means, including education campaigns, as may be practicable, and within the limits of funds supplied for such purposes by the legislative assembly. In carrying out and discharging the duties hereby assigned to it in the field of venereal diseases, the board may appoint such personnel, to serve subject to its orders and directives, as may be reasonably necessary to realize the objectives in the field, and as may be compensated within the limits of appropriations made by the legislative assembly, or by the Congress.

History: En. Sec. 1, Ch. 107, L. 1965.

Title of Act

An act for the prevention, control and treatment of venereal diseases; providing for powers and duties of state, county and local boards of health, physicians and other persons; providing for the methods of control, prevention and treatment of venereal diseases; and repealing sections 69-1101, 69-1102, 69-1103, 69-1104, 69-1105, 69-1106, 69-1107, 69-1108, 69-1109, 69-1110, 69-1111, 69-1112, 69-1113, 69-1114, 69-1115, 69-1116, 69-1117, 69-1118, 69-1119, 69-1120 and 69-1121, R. C. M. 1947.

69-1123. Acceptance and disbursement of federal moneys. The state treasurer is hereby authorized to accept, under the conditions of said acts of Congress, and other acts applicable to the subject matter, and to disburse, under the direction and control of the state board of health in compliance with such acts, all moneys received by or allocated to the state of Montana, under said acts of Congress, or otherwise allotted and paid to the state of Montana by the government of the United States for the prevention, control and treatment of venereal diseases.

History: En. Sec. 2, Ch. 107, L. 1965.

69-1124. Diseases defined as dangerous to public health—exposure of another unlawful. That syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for anyone

infected with any of these diseases to knowingly expose another person to infection.

History: En. Sec. 3, Ch. 107, L. 1965.

69-1125. **Records and reports of venereal cases by physician.** Any physician who makes a diagnosis of or treats a case of venereal disease shall make a record of each such case and report each such case to the state board of health in the manner and on forms provided by the state board.

History: En. Sec. 4, Ch. 107, L. 1965.

69-1126. **Quarantine—examination and treatment of suspects.** State, county and local health officers, their authorized deputies or agents, within their respective jurisdictions, are hereby directed and empowered, when in their judgment it is necessary or desirable to protect or safeguard the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured; and to isolate or quarantine persons who refuse such examination or treatment. No one but the local, county or state health officer shall terminate such isolation or quarantine. Such examinations may be made repeatedly as often as deemed advisable or desirable. It shall be the duty of all local, county and state health officers, or their authorized deputies, within their respective jurisdictions, to investigate sources of infection of venereal diseases.

History: En. Sec. 5, Ch. 107, L. 1965.

69-1127. **Examination and treatment of prisoners.** All persons confined or imprisoned in any state, county or city prison in the state may be examined for, and if infected, treated for venereal diseases by the health authorities or their deputies.

History: En. Sec. 6, Ch. 107, L. 1965.

69-1128. **Notice to local or county health officer of suspected carrier exposing others.** If an attending physician or other person knows or has good reason to suspect that a person having venereal disease is so conducting himself or herself as to expose other persons to infection, or is about to so conduct himself or herself, he shall notify the local or county health officer of the name and address of the diseased person, and the essential facts in the case.

History: En. Sec. 7, Ch. 107, L. 1965.

69-1129. **Unlicensed persons prohibited from prescribing or recommending cure or alleviation.** No person, not a physician licensed under the laws of the state, shall prescribe or recommend to any person any drugs, medicines or other substances to be used for the cure or alleviation of venereal disease or shall compound any drugs or medicines for said purpose, from any written formula or order not written for the person

for whom the drugs or medicines are compounded, and not signed by a physician licensed under the laws of the state.

History: En. Sec. 8, Ch. 107, L. 1965.

69-1130. Certificates of freedom from disease—restrictions on issuance and use. Physicians, health officers and all other persons are prohibited from issuing certificates of freedom from venereal disease, providing this rule shall not prevent the issuance of necessary statements of freedom from infectious diseases, written in such form or given under such safeguards that their use in solicitation for sexual intercourse would be impossible. Such certificates shall not be used or exhibited for solicitation for immoral purposes.

History: En. Sec. 9, Ch. 107, L. 1965.

69-1131. Information and reports confidential. All information and reports concerning persons infected with venereal diseases shall be confidential and inaccessible to any person except authorized personnel of the state board of health or a physician who has the written consent of the person whose record is requested.

History: En. Sec. 10, Ch. 107, L. 1965.

69-1132. Rules and regulations for control of disease. The state board of health is hereby empowered and directed to make such rules and regulations as shall, in its judgment, be necessary for the carrying out of the provisions of this chapter. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this act, and shall have the force and effect of law.

History: En. Sec. 11, Ch. 107, L. 1965.

69-1133. Penalty for violation of chapter, regulations or orders. Any person who shall violate any of the provisions of this chapter or any lawful rule or regulation made by the state board of health, pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by the state, county or local health officer, pursuant to the authority granted in this act, shall be deemed guilty of a misdemeanor.

History: En. Sec. 12, Ch. 107, L. 1965.

69-1134. Serological test for syphilis. A standard serological test for syphilis shall be a test for syphilis approved by the Montana state board of health, and shall be made at a laboratory approved to make such tests by said board. Such laboratory tests, as are required by this act, shall be made on request without charge at the Montana state board of health laboratory. In the event that an erroneous report has been made it shall be the duty of the Montana state board of health to expunge the error from the record.

History: En. Sec. 13, Ch. 107, L. 1965.

69-1135. Blood samples from pregnant women to be tested for syphilis. Every physician or other person authorized by law to practice obstetrics who shall be attending pregnant women in the state for conditions relating to their pregnancy during the period of gestation or at delivery shall, in the case of every woman so attended, take or cause to be taken a sample of blood of such woman at the time of first professional visit and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the state, but not permitted by law to take blood samples, shall cause a sample of blood of such pregnant women to be taken by a duly licensed physician or other person authorized by law to take such sample of blood and have such sample submitted to an approved laboratory for a standard serological test for syphilis. Any physician or other person engaged in attendance upon a pregnant woman who requests a sample of blood in accordance with the provisions of this section and whose request is refused, shall not be guilty of violation of the provisions of said section.

History: En. Sec. 14, Ch. 107, L. 1965.

69-1136. Positive laboratory tests to be reported to state board of health. The results of all positive laboratory tests for venereal diseases shall be reported by the person responsible for performing the tests to the state board of health in the manner prescribed by the state board.

History: En. Sec. 15, Ch. 107, L. 1965.

69-1137. Report of birth to state whether blood test was made. In reporting every birth and stillbirth, physicians and others required to make such reports, shall state on the certificate whether a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken; provided that no birth or stillbirth certificate shall show the result of such test. If no test was made the reason shall be stated.

History: En. Sec. 16, Ch. 107, L. 1965.

69-1138. Use of information—administrative expenditures. The Montana state board of health shall be authorized to use the information derived from reports of positive tests for venereal diseases for such follow-up procedures as are required by law or deemed necessary by said board for the protection of the public health.

The Montana state board of health shall provide the necessary printing, clerical and other technical assistance involved in the administration of the provisions of this chapter or any other expenditures necessary for carrying out its provisions and purposes.

History: En. Sec. 17, Ch. 107, L. 1965.

Repealing Clause

Section 18 of Ch. 107, Laws 1965 read "Sections 69-1101, 69-1102, 69-1103, 69-1104, 69-1105, 69-1106, 69-1107, 69-1108, 69-1109, 69-1110, 69-1111, 69-1112, 69-1113, 69-1114, 69-1115, 69-1116, 69-1117, 69-1118, 69-1119, 69-1120 and 69-1121, R. C. M. 1947, are hereby repealed."

CHAPTER 13—PUBLIC AND OTHER WATER SUPPLIES—CONTROL BY STATE BOARD OF HEALTH

Section 69-1301. State board of health to oversee water supply.
69-1309. Pollution of water supply prohibited.
69-1314. Investigation of pollution complaints—order to discontinue.
69-1342. Declaration of state public policy on subdivisions.
69-1343. "Subdivision" defined.
69-1345. Filing of map or plat subject to sanitary restriction—submission to and approval by board of health—removal or modification of restriction.

69-1301. (2641) **State board of health to oversee water supply.** That the state board of health shall have the general oversight and care of all inland waters and of all streams, lakes and ponds and all springs, wells and underground waters in close proximity to areas being polluted and used by any city, town, or public institution, or by any water or ice company or person in this state, as sources of water supply for domestic use, and of all wells, underground waters, springs, streams and watercourses tributary thereto. It shall be provided with maps, plans, and documents suitable for such purposes, and shall keep records of all its transactions relative thereto.

History: En. Sec. 1, Ch. 177, L. 1907; re-en. Sec. 1559, Rev. C. 1907; re-en. Sec. 2641, R. C. M. 1921; amd. Sec. 1, Ch. 127, L. 1945; amd. Sec. 1, Ch. 157, L. 1965.

Amendment

The 1965 amendment inserted "and all springs, wells and underground waters in close proximity to areas being polluted and" before "used by any city" in the first sentence; and inserted "wells, underground waters" before "springs" near the end of the first sentence.

69-1309. (2649) **Pollution of water supply prohibited.** That no sewerage, drainage, refuse, or polluting matter, of such kind and amount as either of itself or in connection with other matter, will corrupt, pollute, or impair the quality of the water of any spring, pond, lake, or stream or wells or other underground waters used as a source of water or ice supply by a city, town or public institution or water or ice company or person for domestic use, or render it injurious to health, and no human excrement shall be discharged into any such stream, spring, lake, pond, or upon their banks or into any feeders of such spring, lake, pond, stream or into any abandoned or operating water well unless such sewerage, drainage, refuse, or polluting water shall have been purified, so as to render it harmless in such a manner and under such conditions and restrictions as the state board of health may direct.

History: En. Sec. 6, Ch. 177, L. 1907; re-en. Sec. 1564, Rev. C. 1907; amd. Sec. 2, Ch. 66, L. 1911; amd. Sec. 1, Ch. 26, L. 1917; re-en. Sec. 2649, R. C. M. 1921; amd. Sec. 2, Ch. 127, L. 1945; amd. Sec. 2, Ch. 157, L. 1965.

Amendment

The 1965 amendment inserted "or wells or other underground waters" before "used as a source of water"; and inserted "or into any abandoned or operating water well" before "unless such sewerage" in the latter part of the section.

69-1314. (2651) **Investigation of pollution complaints—order to discontinue.** Upon complaint to the state board of health, or the mayor or health officer of any city or town, or the managing board or officer of any public institution, or the president of an ice company, or person in

this state stating that manure, excrement, garbage, sewerage, or any other matter which pollutes or tends to pollute the waters of any lake, pond, spring, stream, watercourse or well or other underground water located in close proximity to areas being polluted and used by such city or town, public institution, company or person in this state as a source of water supply, the said board shall cause a thorough investigation to be made of such alleged nuisance or pollution, and if, in its judgment, the public health so requires, shall, by order served upon the party causing or permitting such pollution, prohibit the continuance of such pollution, and shall order him to remove any such cause of pollution.

History: En. Sec. 8, Ch. 177, L. 1907; re-en. Sec. 1566, Rev. C. 1907; re-en. Sec. 2651, R. C. M. 1921; amd. Sec. 3, Ch. 157, L. 1965.

Amendment

The 1965 amendment inserted "or person in this state" after "president of an ice company" and after "public institution, company"; and inserted "or well or other underground water located in close proximity to areas being polluted and" before "used by such city or town."

69-1342. Declaration of state public policy on subdivisions. The legislative assembly has determined that the health and safety of Montana citizens are being endangered by drainage from cesspools, septic tanks, privies, water closets, and other sources of polluting matter by liquid raising to the ground surface creating nuisances and seeping into drinking water supplies obtained from wells, springs, streams, lakes and ponds. It is declared the public policy of this state to extend the present laws controlling water supply and sewage disposal to include individual wells that may be affected by adjoining sewage disposal and individual sewage systems that may affect adjoining wells.

History: En. Sec. 1, Ch. 95, L. 1961; amd. Sec. 1, Ch. 164, L. 1963.

Amendment

The 1963 amendment substituted "affected" and "affect" near the end of the section for "effected" and "effect."

69-1343. "Subdivision" defined. The word "subdivision" as used in this act shall mean any tract of land which is hereafter divided into two (2) or more parcels, any parcel of which is less than five (5) acres in size, along an existing or proposed street, highway, easement or right of way for sale, rent or lease, as residential lots or residential or industrial or commercial building plots which are described by reference to a map or survey of the property or by any other method of description.

History: En. Sec. 2, Ch. 95, L. 1961; amd. Sec. 2, Ch. 164, L. 1963.

Amendment

The 1963 amendment substituted "two (2) or more parcels" for "five (5) or more parcels"; and inserted "or industrial or commercial" before "building plots."

69-1345. Filing of map or plat subject to sanitary restriction—submission to and approval by board of health—removal or modification of restriction. (a). * * * [Same as parent volume.]

(b) Any such subdivision map or plat or revision thereof may be submitted to the state board of health at any time prior to or after its filing with the county clerk and recorder for review and approval by the state board of health for the water and sewage facilities proposed for such

subdivision in accordance with the provision of this act and its rules and regulations. Upon approval of the state board of health said board shall provide the county clerk and recorder a record of its approval or any conditions thereof for recording on said map or plat or for attachment thereto. When any subdivision map or plat calls for both a public water and public sewage system and the design and construction of such is not complete a conditional approval shall be given and recorded by the state board of health; provided, however, that permanent buildings as described above shall not be occupied in such subdivision until such restriction has been removed or modified as provided hereafter.

(c) Any such subdivision map or plat or revision thereof filed by the county clerk and recorder subject to a sanitary restriction shall have such restriction removed or modified with such restriction removal or modification being made and recorded by the county clerk and recorder on or attached to said map or plat upon receipt of state board of health notice that (a) the state board of health approves plans and specifications for a public water facility and a public sewage facility under existing law pertaining to such facilities and such facilities are under construction or (b) the subdivision map or plat is approved as provided for under the rules and regulations for subdivisions not providing public water or public sewage systems.

History: En. Sec. 4, Ch. 95, L. 1961; amd. Sec. 3, Ch. 164, L. 1963.

Amendment

The 1963 amendment substituted "conditional approval" for "restricted approval" in the first part of the last sentence of subsection (b); substituted "shall not be occupied" for "shall not be constructed" in the proviso appearing at the end of subsection (b); and substituted "under construction" for "constructed" at the end of clause (a) in subsection (c).

CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

Section 69-1516. Certificates must be renewed yearly—disposition of moneys.

69-1516. (2727) **Certificates must be renewed yearly—disposition of moneys.** All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is two dollars ($2.00) in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days (60) from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

All moneys collected by virtue of the provisions of this act must be paid into the state treasury once in each month and credited to the earmarked revenue fund.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" for "the industrial administration fund" at the end of the section.

CHAPTER 18—PUBLIC SAFETY IN CASE OF FIRE—FIRE ESCAPES AND APPARATUS—INSPECTIONS

Section 69-1802. Application of act.

69-1802. Application of act. This act shall apply to hotels, night clubs, boarding or rooming houses, apartments, dormitories, office buildings, theaters, gymnasiums, any place of public amusement or used for public gatherings, colleges, schools, stadiums, amphitheaters, factories, hospitals, boarding and nursing homes for aged persons, motor courts, tourist inns, cabins, asylums, sanitariums, and all other places where large numbers of persons work, sleep, live, or congregate from time to time for any purpose but not to private residences.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 1, Ch. 22, L. 1965.

Amendment

The 1965 amendment inserted "boarding and nursing homes for aged persons."

Effective Date

Section 2 of Ch. 22, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 18, 1965.

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE AND SALE

Section 69-1910. License.

69-1910. (2795) **License.** Every person engaging in the keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the state fire marshal according to the quantity kept or stored therein, of not less than five dollars ($5.00) nor more than thirty dollars ($30.00). Said license fee shall be payable in advance to the state fire marshal and by him paid to the state treasurer.

History: En. Sec. 10, Ch. 129, L. 1917; re-en. Sec. 2795, R. C. M. 1921; amd. Sec. 8, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the minimum license fee specified in the first sentence from $1.00 to $5.00 and the maximum fee from $25 to $30.

CHAPTER 23—CADAVERS—PROCUREMENT FOR TEACHING ANATOMICAL SCIENCE—AUTOPSIES AND DISSECTIONS

Section 69-2306. Burial permit to accompany body—burial.
69-2308. Limitation on right to perform autopsy or dissection.
69-2309. Qualifications to perform autopsies or post-mortem examinations—written report.
69-2310. Autopsy performed contrary to law a misdemeanor—persons exempt from law.

69-2306. Burial permit to accompany body—burial. The burial permit shall accompany the body to said educational institution and by it be properly registered for burial and buried by a licensed mortician or funeral director, at the expense of the institution of higher learning making application for the use of said dead human bodies.

History: En. Sec. 6, Ch. 102, L. 1943; amd. Sec. 19, Ch. 41, L. 1963.

Amendment

The 1963 amendment substituted "mortician or funeral director" for "embalmer or undertaker."

69-2308. Limitation on right to perform autopsy or dissection. The right to perform an autopsy upon, or to dissect the dead body of a human being, or make any post-mortem examination involving dissection of any part of such body, shall be limited to the following cases, viz.: (a) To cases where such autopsy or dissection is specifically authorized by a statute or code provision of this state, (b) or to cases where a coroner is authorized to hold an inquest upon a dead body, as provided by section 94-201-1, and any code section continuing authority for such inquest and then only to the extent such coroner may authorize dissection or autopsy, (c) cases where dissection, autopsy or post-mortem examination is directed or authorized by the last will and testament, or codicil thereto or other written statement of the deceased, whether such statement be of testamentary character or otherwise, (d) cases where the husband, wife or next of kin charged by law with the duty of burial, shall, in writing, authorize dissection, autopsy or other post-mortem examination of the dead body for the purpose of ascertaining the cause of death, and then only to the extent so authorized; and (e) cases where the decedent died in a hospital operated by the United States Veterans Administration, the Montana school for the deaf and blind, or an institution in the department of institutions, leaving no surviving husband, wife or next of kin charged by law with the duty of burial, and when the manager or superintendent of the institution where such body was at the time of death first obtains an order of the district court in, and for the county where such institution is located, authorizing dissection, autopsy or other post-mortem examination, for the purpose of ascertaining the cause of death, and then only to the extent so authorized by such order of the district court.

In all other cases where the decedent died in the state of Montana and while a resident of the state of Montana at the time of death, leaving no surviving husband, wife, or next of kin charged by law with the duty of burial, the attending physician at the time of decedent's death first obtains an order of the district court in, and for the county in which such death occurred, authorizing dissection, autopsy or other post-mortem examination for the purpose of ascertaining the cause of death, and then only to the extent so authorized by the order of the district court, after it has been shown to the satisfaction of the court that applicant for the order has made due and diligent search for the next of kin charged by law with the duty of burial, and after such due and diligent search was unable to find said next of kin.

History: En. Sec. 1, Ch. 172, L. 1949; amd. Sec. 87, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "a hospital operated by the United States Veterans Administration, the Montana school for the deaf and blind, or an institution in the department of institutions" for "one of the institutions located in the state of Montana hereafter named" near the beginning of clause (e) of the first paragraph and deleted the designation of the eight institutions following the first paragraph.

69-2309. Qualifications to perform autopsies or post-mortem examinations—written report. All dissections, autopsies or other post-mortem examinations involving dissection of any part of the human body, (except preparation of the body for burial or cremation by duly licensed morticians

or funeral directors), shall be performed by a physician or surgeon duly licensed to practice such profession by the state board of medical examiners of the state of Montana, and upon completion of any such dissection, autopsy or other post-mortem examination, the physician or surgeon, whether one or more participating, shall deliver a written report thereof, together with his findings as to cause of death, to the next of kin of decedent, or the representative of decedent's estate, or to other persons lawfully requesting such procedures in the cases herein permitted.

History: En. Sec. 2, Ch. 172, L. 1949; amd. Sec. 20, Ch. 41, L. 1963.

Amendment

The 1963 amendment substituted "morticians or funeral directors" for "embalmers" in the parenthetical clause.

69-2310. Autopsy performed contrary to law a misdemeanor—persons exempt from law. Every person who shall make, or cause to be made, any dissection of the body of a human being, or to have any autopsy performed thereon, or to have any other post-mortem examination performed and accomplished except as hereinbefore provided, shall be guilty of a misdemeanor. But nothing in this act shall affect, impair or restrict the right of a duly licensed mortician to dissect the dead body of a human to the extent necessary and proper in the preservation or preparation of such body for burial, cremation or other lawful disposition, in all cases as authorized by the laws of Montana.

History: En. Sec. 3, Ch. 172, L. 1949; amd. Sec. 21, Ch. 41, L. 1963.

Amendment

The 1963 amendment deleted the words "embalmer, undertaker or" which preceded "mortician" in the second sentence.

CHAPTER 24—LONG-TERM CARE FACILITIES

Section 69-2407. Definition of terms.
69-2408. License required
69-2409. Application for license—form and content.
69-2410. Minimum standards for physical plant and staff.
69-2411. Investigation and inspection by the board—term of license.
69-2412. Denial of license.
69-2413. Revocation of license.
69-2414. Notice, hearing and judicial review.
69-2415. Facility to be open for inspection.
69-2416. Records and reports.
69-2417. Expiration of license—renewal—display—prohibition of transfer.
69-2418. Operational rules and regulations.
69-2419. Residents relying on treatment by spiritual means.
69-2420. Penalties.
69-2421. Advisory council.

69-2401 to 69-2406. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 192, L. 1947; Sec. 1, Ch. 243, L. 1959), relating to homes for the aged, were repealed by Sec. 17, Ch. 162, Laws 1965.

69-2407. Definition of terms. "Long-term care facility" means a private institution, building, residence or other place, whether operated for profit or not, which provides, through its operation or management,

nursing, personal care, or maintenance, or combinations thereof to four or more persons who, by reason of illness or physical infirmity, are unable to properly care for themselves, or provides sheltered care to four or more aged persons who require such shelter, and are not related to the operator by blood or marriage, and includes:

(1) "Nursing home," being a facility furnishing skilled nursing care and related services to residents,

(2) "Personal care home," being a facility providing personal care and services to residents not in need of skilled nursing care,

(3) "Boarding home," being a facility providing only maintenance and sheltered care to residents, and,

(4) combinations of nursing home, personal care home, and boarding home.

"Long-term care facility" does not include: (a) a home, institution, or other place operated by the United States or any agency thereof, or by the state of Montana or a political subdivision thereof.

(b) any hospital, medical facility or related facility required to be licensed under chapter 29 of Title 69, R. C. M., 1947, or amendments thereto.

(c) a hospital, sanitarium or other institution whose principal activity or business is the care and treatment of persons suffering from mental or nervous disease.

(d) hotels, motels, boardinghouses, rooming houses or similar accommodations.

"Person" means a natural person or persons, firm, partnership, association or corporation.

"Board" means the state board of health of the state of Montana.

"Resident" means a person admitted to a home as a patient or for personal or sheltered care.

"Welfare" means the enjoyment of health and the common blessings of life.

History: En. Sec. 1, Ch. 162, L. 1965.

Title of Act

An act to define long-term care facility for ill, infirm or aged persons; providing for inspection, licensing and regulation of such facilities by the state board of health; providing for establishment of standards for physical plant, staff and operation of such facilities; providing procedures for issuance, denial or revocation of license and administrative and judicial review thereof; making unlicensed operation of such facility unlawful and providing penalties therefor; providing an advisory council to assist the state board of health; providing for continuation of existing regulations until regulations under this act are adopted, published and distributed; providing a severability clause; and repealing sections 69-2401, 69-2402, 69-2403, 69-2404, 69-2405, and 69-2406, R. C. M., 1947.

69-2408. License required. No person shall open, conduct, manage, or maintain a long-term care facility without a license from the state board of health.

History: En. Sec. 2, Ch. 162, L. 1965.

69-2409. Application for license—form and content. Application to conduct and operate a long-term care facility shall be made to the state board of health in writing on forms furnished by it fifteen (15) days prior

to the proposed opening, and annually thereafter. Each application for such license shall be accompanied by a license fee of twenty dollars ($20.00), which, if the license is granted shall be retained and deposited in the state treasury, or, if the application be denied the fee shall be returned to the applicant. The application shall contain (a) the name and address of the applicant if an individual, and if a firm, partnership or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers;

(b) the location of the facility for which a license is sought;

(c) the name of the person or persons under whose management or supervision the facility will be conducted;

(d) the number and type of residents for which maintenance, care, or nursing is to be provided; and

(e) such information relating to the number, experience, and training of the employees of the facility as the board may require.

History: En. Sec. 3, Ch. 162, L. 1965.

69-2410. Minimum standards for physical plant and staff. The board shall prescribe and publish minimum standards for all facilities, distinguishing between those for residents requiring nursing care, only personal care, only sheltered care, and facilities providing combinations of types of care. These standards shall relate to: (a) location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions which inure to the health, safety, and comfort of residents and their protection from fire hazards, provided that in all nonfire-resistant homes two stories or more in height with ten or more residents, automatic sprinkler systems acceptable to the state fire marshal shall be installed, with said state fire marshal to issue for the information and use of the board, certificates of compliance with fire regulations and standards applicable to the facilities.

(b) numbers and qualifications of personnel, including managerial and nursing personnel, having responsibility for care given to residents.

(c) sanitary conditions in the facility and its grounds including water supply, sewage disposal, food handling, laundries and general hygiene inuring to the health and comfort of residents.

(d) diet based on good nutritional practice, the needs of residents and recommendations of the resident's attending physician.

(e) fixtures and equipment essential to the health and safety of residents.

History: En. Sec. 4, Ch. 162, L. 1965.

69-2411. Investigation and inspection by the board—term of license. Upon receipt of application for license hereunder, the board shall cause an inspection of premises to be used for such facility to be made by its authorized representative, and if satisfied that minimum standards are met and that the applicant and proposed staff are qualified, shall issue a license to operate for a period of one year. A provisional license for a period of less than one year may be issued by the board in its discretion when it determines that operation of a facility prior to qualification for

regular license will not result in undue hazard to residents thereof or the demand for such facility accommodations are not otherwise reasonably met in the community at the time of application.

Inspection will be conducted annually upon receipt of application for renewal of license and may be conducted at such other times as deemed necessary for reported violations of this act or minimum standards, rules or regulations adopted to implement this act.

History: En. Sec. 5, Ch. 162, L. 1965.

69-2412. Denial of license. An application for license may be refused on any of the following grounds:

(a) failure to meet minimum standards prescribed under section 4 [69-2410] hereof.

(b) nursing or other staff personnel insufficient in number or not licensed as required by law, or unqualified by lack of training or experience properly to care for proposed number and type of residents.

(c) conviction of a felony as shown by certified copy of the judicial record of conviction of the applicant or of any of its members or officers or of a person designated to manage or supervise the facility; or other satisfactory evidence that the applicant, manager or supervisor of the facility possesses traits of character inimical to the health and safety of residents.

(d) financial inability to operate and conduct the facility in accord with the requirements of this act and the minimum standards, rules and regulations adopted thereunder, affecting the health, welfare and well-being of the residents.

History: En. Sec. 6, Ch. 162, L. 1965.

69-2413. Revocation of license. A license may be revoked, or a renewal thereof denied for any of the following reasons: (a) cruelty or indifference to the welfare of the residents;

(b) misappropriation of the property or funds of the resident;

(c) conversion of the property of the resident without his consent;

(d) violation of any provision of this law or of the minimum standards, rules, or regulation of the board promulgated thereunder;

(e) any ground upon which an application for a license may be denied as prescribed in section 6 [69-2412] hereof.

History: En. Sec. 7, Ch. 162, L. 1965.

69-2414. Notice, hearing and judicial review. The board, after notice and opportunity for hearing to the applicant of [or] licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law. Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee the board shall make

a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee within such thirty (30) days' period, commences an action in the district court, pursuant to this section. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board with the advice of the advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is reviewed pursuant to this section. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party.

Any applicant or licensee of the state aggrieved by the decision of the board after a hearing, may, within thirty (30) days after mailing or serving of notice of the decision as provided in this section, commence an action in the district court of the county in which the long-term care facility is located or to be located, by the filing of a verified complaint against the board as defendant, and summons shall issue and all further proceedings be conducted as in the case of ordinary civil actions. The board shall, upon filing its answer, certify and file therewith in the court wherein the action is pending a certified copy of the record and decision, including the complete transcript of the hearings on which the decision is based. Findings of fact by the board shall be conclusive unless substantially contrary to the weight of the evidence, or unless in conflict with law, but upon good cause shown the court may remand the case to the board to take further evidence, and the board may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the board and either the applicant or licensee or the board or state may apply for such further review by appeal or otherwise, as is provided by law. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

History: En. Sec. 8, Ch. 162, L. 1965.

69-2415. Facility to be open for inspection. Premises proposed for use as a facility by an applicant for license, and premises used as a facility by a licensee shall be open at all reasonable times to inspection by the board or its authorized agents. The applicant or licensee shall furnish to the board or its agent such information, opportunity for observation, and access to records as the proper enforcement of this act and the rules and regulations implementary thereof require.

History: En. Sec. 9, Ch. 162, L. 1965.

69-2416. Records and reports. Every licensee shall keep such records and make such reports as the board shall prescribe under this act. An annual report containing statistical and informational data shall be submitted by each licensee for the preceding calendar year not later than

January 31 of each year. Such report shall be submitted on forms supplied by the board.

History: En. Sec. 10, Ch. 162, L. 1965.

69-2417. Expiration of license — renewal — display — prohibition of transfer. A license shall expire one (1) year after date of issuance unless renewed or unless specifically issued for a lesser period. The expiration date shall be clearly shown on each license. The license shall be displayed in a conspicuous place inside the facility near the place where residents are admitted. A license shall be valid only in the hands of the person to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than those for which originally issued. Upon discontinuance of the operation of the facility or transfer of ownership the license shall be returned to the board for cancellation.

History: En. Sec. 11, Ch. 162, L. 1965.

69-2418. Operational rules and regulations. In addition to the authority to prescribe minimum standards, the board shall adopt and enforce rules and regulations concerning the operation and conduct of long-term care facilities, and the care, treatment and maintenance of residents therein as it shall deem necessary for the protection of the health and welfare of residents. Such rules and regulations shall relate to: (a) age and physical requirements for admission;

(b) records of resident's medical history, funds, property and contract with the operator;

(c) medical supervision and resident care including use of physical restraints;

(d) reporting of contagious disease, epidemic outbreak or food poisoning;

(e) administration, storage and handling of medications, narcotics, barbiturates and compressed gases;

(f) visiting hours and areas.

History: En. Sec. 12, Ch. 162, L. 1965.

69-2419. Residents relying on treatment by spiritual means. Nothing in this law or the rules and regulations adopted pursuant thereto shall be construed as authorizing the medical supervision, regulation, or control of the remedial care or treatment of residents in any facility conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination. A license is required and all remaining rules and regulations and minimum standards shall apply.

History: En. Sec. 13, Ch. 162, L. 1965.

69-2420. Penalties. The opening or operation of a long-term care facility as herein defined without a license therefore [therefor], or in violation of any provision of this law or any minimum standard, rule,

regulation or order entered by the state board of health thereunder shall be a misdemeanor punishable, upon conviction, by a fine of not more than one hundred dollars ($100) for the first offense and not more than three hundred dollars ($300) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

History: En. Sec. 14, Ch. 162, L. 1965.

69-2421. **Advisory council.** The governor shall appoint a long-term care facility advisory council to consult with the board in matters of policy and in the development and revision of rules, regulations and standards affecting the administration of this act. The council shall consist of the executive officer of the board, who shall serve as chairman ex officio, the state director of public welfare, ex officio, one (1) individual of recognized ability in the field of nongovernment hospital administration, one (1) licensed physician, two (2) individuals of recognized experience in the operation of facilities providing nursing or personal or sheltered care to ill, infirm or aged persons, one (1) registered professional nurse and two (2) individuals with broad civic interests generally and a special interest in the health and welfare of persons in need of the services of long-term care facilities.

Each appointed member shall serve for a term of one (1) to three (3) years as designated by the governor in his appointment. In designating the duration of appointments the governor shall endeavor to avoid expiration of more than three (3) of the appointees' terms in any twelve (12) month period.

The advisory council shall meet at the call of the chairman. At the request of any four (4) of the appointed members, the chairman shall call a meeting of the council.

The members shall serve without compensation other than per diem at the rate of ten dollars ($10.00) per day and mileage at the rate of eight cents (8¢) per mile in lieu of reimbursement for actual expenditures made in the course of their duties and that cost for such meetings come from the state board of health.

History: En. Sec. 15, Ch. 162, L. 1965.

Saving Clause

Section 16 of Ch. 162, Laws 1965 read "Effective date of regulations. The minimum standards and rules and regulations heretofore prescribed by the board under section 69-2405, R. C. M., 1947, as amended, shall remain in effect until minimum standards and rules and regulations adopted under this act shall have been published by the board and copies thereof transmitted to all then current applicants and licensees."

Repealing Clause

Section 17 of Ch. 162, Laws 1965 read "Repeal of existing statutes. Sections 69-2401, 69-2402, 69-2403, 69-2404, 69-2405, and 69-2406, R. C. M., 1947, are repealed."

Separability Clause

Section 18 of Ch. 162, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 29—LICENSING AND SUPERVISION OF HOSPITALS AND RELATED FACILITIES

Section 69-2901. Definitions.
69-2902. Purpose.
69-2903. Licensure.
69-2905. Issuance and renewal of license.
69-2906. Denial or revocation of license—hearing and review.
69-2907. Rules, regulations and enforcement.
69-2908. Effective date of regulations.
69-2910. Hospital, medical and related facilities advisory council.
69-2911. Functions of hospital, medical and related facilities advisory council.
69-2915. Penalties.
69-2916. Injunction.
69-2917. Discrimination by hospitals or related facilities forbidden—interference with relation between physician and patient prohibited.

69-2901. Definitions. As used in this act:

(a) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four hours in any week of two or more nonrelated individuals suffering from illness, disease, injury, or deformity, or a place devoted primarily to providing for not less than twenty-four hours in any week of obstetrical or other medical or nursing care for two or more nonrelated individuals. The term hospital includes public health centers and medical facilities.

(b) "Related facility" includes a facility devoted to the diagnosis, treatment or care of individuals suffering from mental disease or mental retardation.

(c). * * * [Same as (b) in parent volume.]

(d). * * * [Same as (c) in parent volume.]

(e). * * * [Same as (d) in parent volume.]

History: En. Sec. 1, Ch. 269, L. 1947; amd. Sec. 1, Ch. 78, L. 1965.

Amendment

The 1965 amendment added "and medical facilities" at the end of paragraph (a); and inserted a new paragraph (b), redesignating the succeeding paragraphs.

69-2902. Purpose. The purpose of this act is to provide for the development, establishment and enforcement of standards (1) for the care of individuals in hospitals and related facilities and (2) for the construction, alteration, maintenance and operation of hospitals and related facilities, which in the light of advancing knowledge, will promote safe and adequate care of such individuals in hospitals and related facilities.

History: En. Sec. 2, Ch. 269, L. 1947; amd. Sec. 2, Ch. 78, L. 1965.

Amendment

The 1965 amendment inserted "and related facilities" after "hospitals" in three places; and inserted "alteration" in clause (2).

69-2903. Licensure. After July 1, 1947, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital or related facility in this state without a license under this law.

History: En. Sec. 3, Ch. 269, L. 1947; amd. Sec. 3, Ch. 78, L. 1965.

Amendment

The 1965 amendment inserted "or related facility" after "hospital."

69-2905. Issuance and renewal of license. Upon receipt of an application for license and the license fee, the board shall issue a license if the applicant and hospital or related facilities meet the requirements established under this law. A license, unless sooner suspended or revoked, shall be renewable annually upon payment of a renewal fee of ten dollars ($10.00) and filing by the licensee, and approval by the board, of an annual report upon such uniform dates and containing such information in such form as the board prescribed by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the board. Licenses shall be posted in a conspicuous place on licensed premises.

History: En. Sec. 5, Ch. 269, L. 1947; amd. Sec. 4, Ch. 78, L. 1965; amd. Sec. 15, Ch. 121, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 78 and once by Ch. 121. Neither amendatory act mentioned nor incorporated the changes made by the other. The two acts do not appear to conflict except that the requirement of a renewal fee may possibly not apply to "related facilities" as defined in section 69-2901. The compiler has therefore made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 78, Laws 1965, inserted "or related" after "hospital" in the first sentence.

Chapter 121, Laws 1965, substituted "upon payment of a renewal fee of ten dollars ($10.00) and" for "without charge upon" following "renewable annually" in the second sentence.

69-2906. Denial or revocation of license—hearing and review. The board after notice and opportunity for hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law.

Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee the board shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty days after it is so mailed or served, unless the applicant or licensee within such thirty day period, commences an action in the district court, pursuant to section 69-2914.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board with the advice of the hospital, medical and related facilities advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is reviewed pursuant to section 69-2914. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party.

History: En. Sec. 6, Ch. 269, L. 1947; amd. Sec. 5, Ch. 78, L. 1965.

Amendment

The 1965 amendment substituted "hospital, medical and related facilities advisory council" for "advisory hospital council" at the end of the first sentence in the third paragraph.

69-2907. **Rules, regulations and enforcement.** The board with the advice of the hospital, medical and related facilities advisory council, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals and related facilities to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe and adequate care of individuals in hospitals and related facilities in the interest of public health, safety and welfare.

History: En. Sec. 7, Ch. 269, L. 1947; amd. Sec. 6, Ch. 78, L. 1965.

Amendment

The 1965 amendment deleted "and approval" after "advice" near the beginning of the section; substituted "hospital, medical and related facilities advisory council" for "advisory hospital council"; substituted "and related facilities" for "or different types of hospitals" before "to be licensed hereunder"; and inserted "and related facilities" after "hospitals" near the end of the section.

69-2908. **Effective date of regulations.** Any hospital or related facility which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this act shall be given a reasonable time, under the particular circumstances not to exceed one year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards.

History: En. Sec. 8, Ch. 269, L. 1947; amd. Sec. 7, Ch. 78, L. 1965.

Amendment

The 1965 amendment inserted "or related facility" after "Any hospital" at the beginning of the section.

69-2910. **Hospital, medical and related facilities advisory council.** The governor shall appoint a hospital, medical and related facilities advisory council to advise and consult with the board in carrying out the administration of this act and of the Montana Hospital, Medical and Related Facility Survey and Construction Act. The council shall consist of the executive officer of the state board of health (in various acts designated as "secretary" of said board) who shall serve as chairman ex officio, the state director of the department of public welfare, ex officio, the director of public institutions, ex officio, and representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital, medical and related facilities and representatives of consumers familiar with the need for the services provided by such facilities, with the number of members as are or may be required on said council as a condition of eligibility for benefits for hospital, medical and related facilities under any federal law. Each member shall hold office for a term of one (1) to three (3) years, as designated in the appointment, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and, the terms of office of the members shall expire, as designated at the time of appointment. In designating the duration of appointments, the governor

shall endeavor to avoid expiration of more than one-third of the total appointments in any twelve month period. Council members while serving on the business of the council shall be entitled to receive ten dollars ($10.00) per diem, and, also, their actual and necessary travel and subsistence expenses while so serving away from their place of residence. The council shall meet as frequently as the chairman deems necessary, but not less than once each year. Upon request by one-third or more of the members, it shall be the duty of the chairman to call a meeting of the council.

History: En. Sec. 10, Ch. 269, L. 1947; amd. Sec. 8, Ch. 78, L. 1965.

Amendment

The 1965 amendment substituted "a hospital, medical and related facilities advisory council" in the first sentence for "an advisory hospital council"; added "and of the Montana Hospital, Medical and Related Facility Survey and Construction Act" at the end of the first sentence; substituted all of the language in the latter part of the second sentence, beginning with "the director of public institutions, ex officio" for "and the following nine (9) members, namely: three (3) individuals of recognized ability in the field of nongovernmental hospital administration; three (3) individuals of recognized ability in the fields of medicine and surgery, nursing, welfare, public health, architecture, or allied professions in the field of health, and three (3) individuals with broad civic interests representing consumers of hospital services"; substituted "one (1) to three (3) years, as designated in the appointment" for "four (4) years" in the first part of the third sentence; deleted "three at the end of the second year, three at the end of the third year, three at the end of the fourth year, after the date of appointment" at the end of the third sentence; inserted a new fourth sentence; and substituted "one-third or more of the members" for "three (3) or more members" in the final sentence.

Repealing Clause

Section 9 of Ch. 78, Laws 1965 read "Section 69-2910.1, R. C. M. 1947, is repealed."

69-2910.1. Repealed.

Repeal

This section (Sec. 1, Ch. 78, L. 1953), transferring functions to the former advisory hospital council, was repealed by Sec. 9, Ch. 78, Laws 1965.

69-2911. Functions of hospital, medical and related facilities advisory council. The hospital, medical and related facilities advisory council shall consult and advise with the board in matters of policy affecting administration of the Montana Hospital, Medical and Related Facility Survey and Construction Act and of this act, and in the development of rules, regulations and standards provided for hereunder.

History: En. Sec. 11, Ch. 269, L. 1947; amd. Sec. 10, Ch. 78, L. 1965.

Amendment

The 1965 amendment substituted "The hospital, medical and related facilities advisory council" at the beginning of the section for "The advisory hospital council"; inserted the reference to the Hospital, Medical and Related Facility Survey and Construction Act; deleted a paragraph (b) reading, "To review and approve, before the same becomes effective, rules, regulations and standards authorized hereunder, prior to their promulgation by the board as specified herein"; and made minor changes in phraseology and format.

69-2915. Penalties. Any person establishing, conducting, managing, or operating any hospital or related facility without a license under this law shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars ($100.00) for the first offense and not more than three hundred dollars ($300.00) for each subsequent offense,

and each day of a continuing violation after conviction shall be considered a separate offense.

History: En. Sec. 15, Ch. 269, L. 1947; amd. Sec. 11, Ch. 78, L. 1965.

Amendment

The 1965 amendment inserted "or related facility" after "hospital."

69-2916. Injunction. Notwithstanding the existence or pursuit of any other remedy, the board, may in the manner provided by law upon the advice of the attorney general who shall represent the board in the proceedings maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital or related facility without a license under this law.

History: En. Sec. 16, Ch. 269, L. 1947; amd. Sec. 12, Ch. 78, L. 1965.

Amendment

The 1965 amendment inserted "or related facility" after "hospital" near the end of the section.

69-2917. Discrimination by hospitals or related facilities forbidden—interference with relation between physician and patient prohibited. (a) Notwithstanding any other provision of this act, no person, firm, copartnership, association, corporation, public or private, and no religious, denominational or secular order, or organization, trustees or trust conducting or operating either directly or as lessee, or otherwise, a hospital or hospitals or related facility not maintained for private or corporate pecuniary profit, or operating or conducting a hospital or hospitals or related facility which are institutions of public charity, any of which hospitals or related facilities in any case are exempt, or cause themselves to become exempt, under applicable law from any state, county or municipal tax by reason of their nonprofit status or charitable nature or character, shall in any manner or by any device discriminate between the patients of any regularly licensed physician for or upon any ground or reason whatever, including the fact that any such physician is not a member of the medical or surgical, or other staff, clinic, or internal instrumentality of such hospital or related facility. All such hospitals and related facilities are hereby directed, required and compelled to admit, receive and care for the patients of any regularly licensed physician and surgeon, under the same terms and conditions as may be established and promulgated by the governing authority, management or staff of said hospital or related facility for the patients of any other regularly licensed physician without discrimination, direct or indirect.

(b) Notwithstanding any other provision of this act, the free and confidential professional relation between licensed physician and patient shall continue and remain unaffected and unchanged, and be preserved as a privileged relationship; and licensed physicians shall continue to have direction over their patients in hospitals and related facilities.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 17, Ch. 269, L. 1947; amd. Sec. 13, Ch. 78, L. 1965.

Amendment

The 1965 amendment inserted "or re-

lated facility" or "and related facilities" after "hospital" or "hospitals" in six places in subsection (a) and at the end of subsection (b).

Effective Date

Section 14 of Ch. 78, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

CHAPTER 30—MONTANA HOSPITAL, MEDICAL AND RELATED FACILITY SURVEY AND CONSTRUCTION ACT

Section 69-3001. Title.
69-3002. Definitions.
69-3003. Administration—hospital, medical and related facility survey and construction.
69-3004. General powers and duties.
69-3007. Construction program.
69-3008. Application for federal funds for survey and planning—expenditure.
69-3009. State plans.
69-3010. Minimum standards for hospital, medical and related facilities maintenance and operation.
69-3012. Construction projects—applications.
69-3013. Consideration and forwarding of applications.
69-3014. Inspection of projects.
69-3015. Hospital, medical and related facilities construction and alteration moneys.
69-3016.1. Discrimination prohibited in subsidized facilities.

69-3001. Title. This act may be cited as the "Montana Hospital, Medical and Related Facility Survey and Construction Act."

History: En. Sec. 1, Ch. 270, L. 1947; amd. Sec. 1, Ch. 77, L. 1965.

Amendment

The 1965 amendment inserted "Medical and Related Facility" in the title.

69-3002. Definitions. As used in this act:

(a) "Board" means the state board of health of the state of Montana.

(b) "The Federal Acts" mean Title VI of the Public Health Service Act (42 U. S. C. 291 et seq.); Title VII of the Public Health Service Act (42 U. S. C. 2671 et seq.); as now and hereafter amended and federal acts hereafter enacted for the construction of medical or related facilities.

(c) "Administering federal agency" means the respective department, commission or officer designated by or under one of the federal acts to administer the programs provided by the respective acts.

(d) to (g). * * * [Same as parent volume.]

(h) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and facilities for long term care as those terms are defined in the federal acts, and such other medical facilities for which federal aid may be authorized.

(i) "Related facility" includes a facility devoted to the diagnosis, treatment or care of individuals afflicted with mental disease or mental retardation.

History: En. Sec. 2, Ch. 270, L. 1947; amd. Sec. 1, Ch. 215, L. 1955; amd. Sec. 2, Ch. 77, L. 1965.

Amendment

The 1965 amendment inserted in paragraph (b) the references to Title VII of the Public Health Service Act and to "federal acts hereafter enacted"; substituted a new paragraph (c) for a paragraph reading, "'The Surgeon General' means surgeon general of the public health

service of the United States"; substituted "facilities for long term care" in paragraph (h) for "nursing homes"; added paragraph (i); and made other minor changes.

69-3003. **Administration—hospital, medical and related facility survey and construction.** Except where another state agency is specifically designated by law, the state board of health of the state of Montana is hereby designated as the sole agency of the state of Montana to establish and administer any statewide plan for the construction, alteration, equipment, maintenance, or operation of any hospital, medical or related facilities for the provision of care, treatment, diagnosis, rehabilitation, training, or related services, which plan is now, or may hereafter be required as a condition to the eligibility for benefits under any federal law. The state board of health, in its discretion, is authorized to, for and on behalf of the state of Montana, enter into contracts and agreements with the United States or any officer, department or bureau thereof, relative to such statewide plans, and to do those things necessary or required to secure for the people of the state of Montana the benefit of such programs as will provide adequate medical and related facilities and services.

The board shall make an inventory of existing hospitals, medical and related facilities; survey the need for construction or alteration of hospitals, medical and related facilities; and develop and administer a state plan for the construction and alteration of public and other nonprofit hospitals, medical and related facilities.

History: En. Sec. 3, Ch. 270, L. 1947; amd. Sec. 2, Ch. 215, L. 1955; amd. Sec. 22, Ch. 264, L. 1955; amd. Sec. 3, Ch. 77, L. 1965.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

69-3004. **General powers and duties.** In carrying out the purposes of this act, the board is authorized and directed:

(a) To require such reports, make such inspections and investigations and prescribe such regulations as it deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel and take such other action as may be necessary to comply with the requirements of the federal acts and the regulations thereunder;

(c) to (e). * * * [Same as parent volume.]

(f) To make an annual report to the governor on activities and expenditures pursuant to this act, including recommendations for such additional legislation as the board considers appropriate to furnish adequate hospital, medical and related facilities to the people of this state.

History: En. Sec. 4, Ch. 270, L. 1947; amd. Sec. 3, Ch. 215, L. 1955; amd. Sec. 23, Ch. 264, L. 1955; amd. Sec. 4, Ch. 77, L. 1965.

Amendment

The 1965 amendment inserted "and related" before "facilities" near the end of paragraph (f); and made other minor changes in the preliminary clause and in paragraph (b).

69-3006. **Repealed.**

Repeal

This section (Sec. 7, Ch. 270, L. 1947; Sec. 4, Ch. 215, L. 1955), relating to survey and planning activities, was repealed by Sec. 14, Ch. 77, Laws 1965.

69-3007. **Construction program.** The construction program shall provide, in accordance with regulations prescribed under the federal acts, for adequate hospital facilities, medical and related facilities for the people residing in this state and in so far as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital, medical and related facilities services reasonably accessible to all persons in the state.

History: En. Sec. 8, Ch. 270, L. 1947; amd. Sec. 5, Ch. 215, L. 1955; amd. Sec. 5, Ch. 77, L. 1965.

Amendment

The 1965 amendment inserted "and related" before "facilities" in two places; and made other minor changes.

69-3008. **Application for federal funds for survey and planning—expenditure.** The board is authorized to make application to the administering federal agency for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited in the state treasury and shall be available to the board for expenditure for carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasury of the United States.

History: En. Sec. 9, Ch. 270, L. 1947; amd. Sec. 6, Ch. 77, L. 1965.

Amendment

The 1965 amendment substituted "the administering federal agency" for "the surgeon general" in the first sentence.

69-3009. **State plans.** The board shall prepare and submit to the administering federal agency state plans which shall include the hospital, medical and related facilities construction programs developed under this act and which shall provide for the establishment, administration, and operation of hospital, medical and related facilities construction activities in accordance with the requirements of the federal acts and regulations thereunder. The board shall, prior to the submission of such plans to the administering federal agency, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plans may be given an opportunity to express their views. After approval of a plan by the administering federal agency, the board shall publish a general description of the provisions thereof in newspapers having general circulation throughout the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The board shall from time to time review the hospital, medical and related facilities construction programs and submit to the administering federal agency any modifications thereof which it may find necessary and may submit to the administering federal agency such modifications of the state plans, not inconsistent with the requirements of the federal acts, as it may deem advisable.

History: En. Sec. 10, Ch. 270, L. 1947; amd. Sec. 6, Ch. 215, L. 1955; amd. Sec. 7, Ch. 77, L. 1965.

Amendment

The 1965 amendment substituted "the administering federal agency" for "the surgeon general" in five places; pluralized "state plan," "program," and "federal act" throughout the section; inserted "and related" before "facilities" in three places; deleted "in three (3) successive publications at intervals of one (1) week between publications" after "general description of

the provisions thereof" in the third sentence; substituted "newspapers having general circulation throughout the state" in the third sentence for "at least one newspaper having general circulation in each county in the state, and in five (5) papers having a general circulation throughout the state"; and made other minor changes.

69-3010. **Minimum standards for hospital, medical and related facilities maintenance and operation.** The board shall by regulation, after consultation with the hospital, medical and related facilities advisory council, prescribe minimum standards for the maintenance and operation of hospitals, medical and related facilities which receive federal aid for construction under the state plan.

History: En. Sec. 11, Ch. 270, L. 1947; amd. Sec. 7, Ch. 215, L. 1955; amd. Sec. 8, Ch. 77, L. 1965.

Amendment

The 1965 amendment inserted "after consultation with the hospital, medical and related facilities advisory council"; inserted "and related" before "facilities" in the latter part of the section; and made another minor change.

69-3012. **Construction projects—applications.** Applications for hospital, medical and related facilities construction projects for which federal funds are requested shall be submitted to the board and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or a medical or related facility. Each application for a construction project shall conform to federal and state requirements.

History: En. Sec. 13, Ch. 270, L. 1947; amd. Sec. 8, Ch. 215, L. 1955; amd. Sec. 9, Ch. 77, L. 1965.

Amendment

The 1965 amendment inserted "and related" before "facilities" and "or related" before "facility."

69-3013. **Consideration and forwarding of applications.** The board shall afford to every applicant for a construction project an opportunity for a fair hearing. If the board, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of section 69-3012 and is otherwise in conformity with the state plan, it shall approve such application and shall recommend and forward it to the administering federal agency.

History: En. Sec. 14, Ch. 270, L. 1947; amd. Sec. 10, Ch. 77, L. 1965.

Amendment

The 1965 amendment substituted "the administering federal agency" at the end of the section for "the surgeon general"; and made another minor change.

69-3014. **Inspection of projects.** From time to time the board shall inspect each construction or alteration project approved by the administering federal agency, and, if the inspection so warrants, the board shall certify to the administering federal agency that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

History: En. Sec. 15, Ch. 270, L. 1947; amd. Sec. 11, Ch. 77, L. 1965.

Amendment

The 1965 amendment inserted "or alteration" before "project"; and substituted "the administering federal agency" for "the surgeon general" in two places.

69-3015. Hospital, medical and related facilities construction and alteration moneys. The board is hereby authorized to receive federal funds on behalf of, and transmit them to, such applicants. Money received from the federal government for a construction or alteration project approved by the administering federal agency shall be deposited in the state treasury and shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Claims for all payments shall, if approved by the board, bear the signature of the executive officer (secretary) of the board, or in his absence, the director.

History: En. Sec. 16, Ch. 270, L. 1947; amd. Sec. 9, Ch. 215, L. 1955; amd. Sec. 68, Ch. 147, L. 1963; amd. Sec. 12, Ch. 77, L. 1965.

Amendments

The 1963 amendment deleted a former second sentence reading, "There is hereby established, separate and apart from all public moneys and funds of this state, a hospital and medical facilities construction fund"; substituted "in the state treasury" in the present second sentence for "to the credit of this fund"; and deleted "from the hospital and medical facilities construction fund" which followed "payments" in the final sentence.

The 1965 amendment inserted "or alteration" before "project" in the second sentence; substituted "the administering federal agency" for "the surgeon general" in the second sentence; and made another minor change.

69-3016.1. Discrimination prohibited in subsidized facilities. No person shall be denied the use in a professional or other capacity, or be subjected to discrimination on the grounds of race, color or national origin, of any facility constructed in whole or in part under the provisions of this act.

History: En. Sec. 13, Ch. 77, L. 1965.

Title of Act

An act amending sections 69-3001, 69-3002, 69-3003, 69-3004, 69-3007, 69-3008, 69-3009, 69-3010, 69-3012, 69-3013, 69-3014, and 69-3015, as amended, R. C. M. 1947, relating to hospital survey and construction; providing for the development and administration of hospital, medical and related facility construction and alteration programs; providing for compliance with requirements of federal acts and regulations to secure assistance in such programs; designating and authorizing the state board of health as the agency of the state of Montana for the development and administration of such programs and empowered to contract wtih the federal government in furtherance thereof; repealing section 69-3006, R. C. M. 1947; and providing an effective date.

Repealing Clause

Section 14 of Ch. 77, Laws 1965 read "Section 69-3006, R. C. M., 1947, is repealed."

Effective Date

Section 15 of Ch. 77, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

CHAPTER 32—STATE BOARD OF HEALTH—MATERNAL AND CHILD HEALTH SERVICES—EDUCATIVE PROGRAM—SCHOOL NURSES—SUPERVISION BY BOARD—AUTHORITY OF COUNTIES AND SCHOOL BOARDS—SERVICES FOR CRIPPLED CHILDREN—EDUCATION FOR CHILDREN AND ADULTS IN USE AND ABUSE OF NARCOTICS

Section 69-3203. Services for crippled children.
69-3206. Information on infant mortality or morbidity may be furnished.
69-3207. Information to be used only for medical research—identity of persons treated not to be revealed.
69-3208. Information furnished deemed privileged communication.
69-3209. Phenylketonuria test required at birth.
69-3210. Rules and regulations for phenylketonuria testing.

69-3203. Services for crippled children. The state board of health is hereby authorized and directed to develop and administer a program for

services to crippled children, which shall have for its purpose, as far as practicable under the conditions existing in the state of Montana, to supply, extend and improve the services designated by this act for crippled children in the state of Montana. These services shall consist of locating such children and providing diagnosis, medical, surgical and corrective treatment, after-care and related services for children who are crippled, or who are suffering from conditions which lead to crippling; and the board may, in its discretion, within the limits of its funds, provide services for children who are afflicted with or suffering from rheumatic fever, cystic fibrosis, or heart diseases, and who are totally incapacitated for education or for remunerative occupation. Special attention shall be given to this program in rural areas and in areas suffering from severe economic distress. The board shall do all things that are necessary to carry out this program, in so far as means are available and conditions in this state justify, and shall proceed in conformity with the Social Security Act of the United States, rules and regulations promulgated by the United States children's bureau, and the statutes of the state of Montana.

History: En. 69-3203 by Sec. 24, Ch. 264, L. 1955; amd. Sec. 1, Ch. 106, L. 1965.

Amendment

The 1965 amendment inserted "cystic fibrosis" in the second sentence.

69-3206. Information on infant mortality or morbidity may be furnished. Any person, hospital, sanatorium, nursing or rest home or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the state board of health, the Montana medical association, any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee, to be used in the course of any study for the purpose of reducing infant morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

History: En. Sec. 1, Ch. 197, L. 1963.

Title of Act

An act providing that information and data concerning infant morbidity and mortality may be provided to the state board of health, the Montana medical association and any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee, for the purpose of reducing infant morbidity and mortality through study and medical research; providing that no liability shall arise by reason of having furnished any such information or data, or by reason of having released or published the findings and conclusions of such groups to advance medical research and education, or by reason of having released or published generally a summary of such studies; providing that the identity of any person whose condition or treatment is the subject of any information or data provided under the terms of this act shall not be revealed under any circumstances; and providing that the information and data received under the terms of this act and the conclusions resulting from studies conducted under the terms of this act shall be privileged communications.

69-3207. Information to be used only for medical research—identity of persons treated not to be revealed. The state board of health, the Montana medical association, any of its allied medical societies, any committees of nationally organized medical societies or research groups, or any in-hospital staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing infant morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

History: En. Sec. 2, Ch. 197, L. 1963.

69-3208. Information furnished deemed privileged communication. All information, interviews, reports, statements, memoranda, or other data furnished by reason of this act and any findings or conclusions resulting from such studies are declared to be privileged communications which may not be used or offered or received in evidence in any legal proceeding of any kind or character, and any attempt to use or offer any such information, interviews, reports, statements, memoranda or other data, findings or conclusions or any part thereof, unless waived by the person treated or his legal representative, shall constitute prejudicial error resulting in a mistrial in any such proceeding.

History: En. Sec. 3, Ch. 197, L. 1963.

69-3209. Phenylketonuria test required at birth. It shall be the duty of the administrative officer or other person in charge of each institution caring for new born infants and the person responsible for the registration of the birth of a child to cause to have administered to every such infant in its or his care a test for phenylketonuria in accordance with regulations to be prescribed by the state board of health.

History: En. Sec. 1, Ch. 108, L. 1965.

Title of Act

An act requiring a test for phenylketonuria to infant children and empowering the state board of health to adopt necessary rules and regulations.

69-3210. Rules and regulations for phenylketonuria testing. The state board of health is hereby empowered to adopt and prescribe and promulgate suitable rules and regulations to carry out the purpose of this act.

History: En. Sec. 2, Ch. 108, L. 1965.

Effective Date

Section 3 of Ch. 108, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

CHAPTER 34—SANITARIANS

Section 69-3404. Fees.

69-3404. Fees. Applicants for registration shall pay a fee of twenty dollars ($20.00) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying an

annual fee as set by the board, but not to exceed ten dollars ($10.00). All fees collected shall be paid to the board of health and deposited by the board in the earmarked revenue fund for the use of the sanitarians registration council. All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the council.

History: En. Sec. 4, Ch. 174, L. 1959; amd. Sec. 119, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited by the board in the earmarked revenue fund for the use of the sanitarians registration council" for "held in a special fund and shall be used to defray the cost of administration of this act in accordance with a budget developed by the council and the board" at the end of the third sentence.

CHAPTER 35—MOTORBOAT AND VESSEL REGULATION

Section 69-3502. Definitions.
69-3505. Equipment.
69-3508.1. Discharge of waste from boat prohibited.
69-3508.2. Penalty for discharge of waste from boat.

69-3502. Definitions. As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": for purposes of registration "vessel" shall mean those watercraft described under section 3 of public law 85-911, H.R. 11078 unless otherwise defined by the fish and game commission of the state of Montana; as pertains to the safety regulations of this act "vessel" means every description of watercraft other than a seaplane on the water capable of being used as a means of transportation on water.

(2) to (6). * * * [Same as parent volume.]

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act, except for section 69-3504, in which section the word "board" shall mean the board of equalization of the state of Montana.

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963.

Amendment

The 1963 amendment added the words "in all sections of this act, except for section 69-3504, in which section the word 'board' shall mean the board of equalization of the state of Montana" at the end of paragraph (7); and made a minor change in punctuation.

69-3505. Equipment. (1) Every vessel shall have aboard:

(a) One life preserver, buoyant vest, ring buoy or buoyant cushion of the type approved by the commandant of the United States coast guard in good and serviceable condition for each person on board, provided, in boats under twenty-six (26) feet in length, that any person or persons, twelve (12) years of age or younger, occupying a vessel while such vessel is in motion, shall have a life preserver of a type approved by the commandant of the United States coast guard securely fastened to his or her person.

(b) When in operation during hours of darkness, a light sufficient to make the motorboat's or vessel's presence and location known to any and all other vessels within a reasonable distance.

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during the time such motorboat or vessel is occupied by any person.

(d) All motorboats shall carry the minimum number of coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(e) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(f) The board is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(g) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(2) No vessel shall be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage shall be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the state board of health.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965.

Amendments

The 1963 amendment added paragraphs (5), (6), and (7), now paragraphs (e), (f), and (g) of subsection (1).

The 1965 amendment designated the former text as subsection (1); redesignated the former numbered paragraphs as lettered paragraphs of subsection (1); and added subsection (2).

Effective Date

Section 3 of Ch. 230, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

69-3508.1. Discharge of waste from boat prohibited. No person shall discharge or cause, permit or suffer to be discharged, any garbage, refuse, waste or sewage from any boat into or upon the waters of any stream, river or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965.

Title of Act

An act to prevent water pollution by prohibiting the discharge of sewage from vessels; and amending section 69-3505, R. C. M. 1947.

69-3508.2. **Penalty for discharge of waste from boat.** A person who is convicted of a violation of this act shall be punished by a fine of not more than twenty-five dollars ($25).

History: En. Sec. 3, Ch. 169, L. 1965.

CHAPTER 37—ACCOMMODATION OF HANDICAPPED PERSONS IN PUBLIC BUILDINGS

Section 69-3701. Application of act.
69-3702. Scope and purpose.
69-3703. Definitions.
69-3704. Design criteria.
69-3705. Site development.
69-3706. Ramps.
69-3707. Entrances.
69-3708. Doors.
69-3709. Stairs.
69-3710. Floors.
69-3711. Toilet rooms.
69-3712. Water fountains.
69-3713. Public telephones.
69-3714. Elevators.
69-3715. Switches and controls.
69-3716. Identification for the blind.
69-3717. Warning signals.
69-3718. Hazards.
69-3719. Responsibility for enforcement.

69-3701. **Application of act.** (1) The standards and specifications set forth in this act shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county or municipal funds, or the funds of any political subdivision of the state. All such buildings and facilities constructed in this state after the effective date of this act from any one of these funds or any combination thereof shall conform to each of the standards and specifications prescribed herein except where the authority responsible for the proper construction for the particular governmental department, agency or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable.

(2) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this act, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This act shall apply to temporary or emergency construction as well as permanent buildings.

History: En. Sec. 1, Ch. 223, L. 1965.

Title of Act

An act to require that those buildings and facilities, constructed in the state by the use of state, county or municipal funds, shall adhere to the principles prescribed by this act in order to make these buildings and facilities accessible to, and useable by, the physically handicapped.

69-3702. Scope and purpose. (1) This act is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of inco-ordination and aging.

(2) It is intended to make all buildings and facilities covered by this act accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space or facility where the general public is concerned.

History: En. Sec. 2, Ch. 223, L. 1965.

69-3703. Definitions. For the purposes of this act the following terms shall have the meanings as herein set forth: (1) "Nonambulatory disabilities" shall mean impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheel chairs.

(2) "Semiambulatory disabilities" shall mean impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics and those with pulmonary and cardiac ills may be semiambulatory.

(3) "Sight disabilities" shall mean total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

(4) "Hearing disabilities" shall mean deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals.

(5) "Disabilities of inco-ordination" shall mean faulty co-ordination or palsy from brain, spinal or peripheral nerve injury.

(6) "Aging" shall mean those manifestations of the aging processes that significantly reduce mobility, flexibility, co-ordination and perceptiveness but are not accounted for in the aforementioned categories.

(7) "Standard," when this term appears in small letters, shall be descriptive and shall mean typical type.

(8) "Fixed turning radius, wheel to wheel" shall mean the tracking of the caster wheels and large wheels of a wheel chair when pivoting on a spot.

(9) "Fixed turning radius, front structure to rear structure" shall mean the turning radius of a wheel chair, left front-foot platform to right rear wheel, or right front-foot platform to left rear wheel when pivoting on a spot.

(10) "Involved (involvement)" shall mean a portion or portions of the human anatomy or physiology, or both, that have a loss or impairment of normal function as a result of genesis, trauma, disease, inflammation or degeneration.

(11) "Ramps, ramps with gradients" shall mean ramps with gradients (or ramps with slopes) that deviate from what would otherwise be considered the normal level. An exterior ramp, as distinguished from a "walk," shall be considered an appendage to a building leading to a level above or below existing ground level. As such, a ramp shall meet certain requirements similar to those imposed upon stairs.

(12) "Walk, walks" shall mean a predetermined, prepared-surface, exterior pathway leading to or from a building or a facility, or from one exterior area to another, placed on the existing ground level and not deviating from the level of the existing ground immediately adjacent.

(13) "Appropriate number" shall mean the number of a specific item that would be reasonably necessary, in accord with the purpose and function of a building or a facility, to accommodate individuals with specific disabilities in proportion to the anticipated number of individuals with disabilities who would use a particular building or facility.

History: En. Sec. 3, Ch. 223, L. 1965.

69-3704. Design criteria. The following design criteria shall be applicable: (1) The collapsible-model wheel chair of tubular metal construction with plastic upholstery for back and seat is most commonly used. The standard model of all manufacturers falls within the following limits, which are used as the basis of consideration:

(a) Length: 42 inches
(b) Width, when open: 25 inches
(c) Height of seat from floor: 19½ inches
(d) Height of armrest from floor: 29 inches
(e) Height of pusher handles (rear) from floor: 36 inches
(f) Width, when collapsed: 11 inches

(2) The fixed turning radius of a standard wheel chair, wheel to wheel, is 18 inches. The fixed turning radius, front structure to rear structure, is 31.5 inches.

(3) The average turning space required by a person in a wheel chair (180 to 360 degrees) is 60 x 60 inches. A turning space of 63 x 56 inches may at times prove more workable and desirable.

(4) A minimum width of 60 inches is required for two individuals in wheel chairs to pass each other.

(5) In a wheel chair the average unilateral vertical reach is 60 inches and ranges from 54 inches to 78 inches.

(6) The average horizontal working (table) reach of a person in a wheel chair is 30.8 inches and ranges from 28.5 inches to 33.2 inches.

(7) The bilateral horizontal reach, both arms extended to each side, shoulder high, of a person in a wheel chair, ranges from 54 inches to 71 inches and averages 64.5 inches.

(8) An individual reaching diagonally (from a wheel chair) as would be required in using a wall-mounted dial telephone or towel dispenser, would make the average reach (on the wall) 48 inches from the floor.

(9) Most individuals ambulating on braces or crutches, or both, or on canes are able to manipulate within the specifications prescribed for wheel chairs, although doors present quite a problem at times. However, a crutch tip extending laterally from an individual is not obvious to others in heavily trafficked areas, and not as obvious or protective as a wheel chair and is, therefore, a source of vulnerability.

(10) On the average, individuals 5 feet 6 inches tall require an average of 31 inches between crutch tips in the normally accepted gaits.

(11) On the average, individuals 6 feet 0 inches tall require an average of 32.5 inches between crutch tips in the normally accepted gaits.

History: En. Sec. 4, Ch. 223, L. 1965.

69-3705. Site development. (1) The ground shall be graded, even contrary to existing topography, so that it attains a level with a normal entrance and will make a facility accessible to individuals with physical disabilities.

(2) Public walks shall be at least 48 inches wide and shall have a gradient not greater than 5 per cent. These walks shall be of a continuing common surface, not interrupted by steps or abrupt changes in level. Wherever walks cross other walks, driveways or parking lots they shall blend to a common level. A walk shall have a level platform at the top which is at least 5 feet by 5 feet, if a door swings out onto the platform or toward the walk. This platform shall extend at least 1 foot beyond each side of the doorway. A walk shall have a level platform at least 3 feet deep and 5 feet wide, if the door does not swing onto the platform or toward the walk. This platform shall extend at least 1 foot beyond each side of the doorway.

(3) Spaces in parking lots that are accessible to the building or facility shall be set aside and identified for use by individuals with physical disabilities. An adequate parking space is one that is open on one side and which allows room for individuals in wheel chairs or individuals on braces and crutches to get in and out of an automobile onto a level surface, suitable for wheeling and walking. Parking spaces for individuals with physical disabilities when placed between two conventional diagonal or head-on parking spaces shall be 12 feet wide. Care in planning shall be exercised so that individuals in wheel chairs and individuals using braces and crutches are not compelled to wheel or walk behind parked cars. Consideration shall be given to the distribution of spaces for use by the disabled in accordance with the frequency and regularity of their parking needs. Walks shall be in conformity with section 5 [this section] of this act.

History: En. Sec. 5, Ch. 223, L. 1965.

69-3706. Ramps. (1) Where ramps with gradients are necessary or desired, they shall conform to the following specifications: A ramp shall not have a slope greater than 1 foot rise in 12 feet, or 8.33 per cent, or 4 degrees 50 minutes. A ramp shall have handrails on at least one side, and preferably two sides, that are 32 inches in height, measured from the surface of the ramp, that are smooth, that extend 1 foot beyond the top and bottom of the ramp, and that as far as practicable conform with American standard safety code for floor and wall openings, and toe boards as promulgated by the American Standards Association, Inc.

(2) A ramp shall have a surface that is nonslip. A ramp shall have a level platform at the top which is at least 5 feet by 5 feet, if a door swings out onto the platform or toward the ramp. This platform shall extend at

least 1 foot beyond each side of the doorway. A ramp shall have a level platform at least 3 feet deep and 5 feet wide, if the door does not swing onto the platform or toward the ramp. This platform shall extend at least 1 foot beyond each side of the doorway. Each ramp shall have at least 6 feet of straight clearance at the bottom. Ramps shall have level platforms at 30 foot intervals for purposes of rest and safety and shall have level platforms wherever they turn.

History: En. Sec. 6, Ch. 223, L. 1965.

69-3707. **Entrances.** At least one primary entrance to each building shall be useable by individuals in wheel chairs. At least one entrance useable by individuals in wheel chairs shall be on a level that would make the elevators accessible.

History: En. Sec. 7, Ch. 223, L. 1965.

69-3708. **Doors.** Doors shall have a clear opening of no less than 32 inches when open and shall be operable by a single effort. The floor on the inside and outside of each doorway shall be level for a distance of 5 feet from the door in the direction the door swings and shall extend 1 foot beyond each side of the door. Sharp inclines and abrupt changes in level shall be avoided at doorsills. As much as practicable, thresholds shall be flush with the floor.

History: En. Sec. 8, Ch. 223, L. 1965.

69-3709. **Stairs.** Stairs shall conform to standards of the American Standards Association, Inc., with the following additional considerations: Steps in stairs shall be designed wherever practicable so as not to have abrupt (square) nosing. Stairs shall have handrails 32 inches high as measured from the tread at the face of the riser. Stairs shall have at least one handrail that extends at least 18 inches beyond the top step and beyond the bottom step. Steps should, wherever possible, and in conformation with existing step formulas, have risers that do not exceed 7 inches.

History: En. Sec. 9, Ch. 223, L. 1965.

69-3710. **Floors.** Floors shall wherever practicable have a surface that is nonslip. Floors on the same story shall be of a common level throughout or be connected by a ramp in accord with section 6 (1) [69-3706 (1)] through the first paragraph of section 6 (2) [69-3706 (2)], inclusive.

History: En. Sec. 10, Ch. 223, L. 1965.

69-3711. **Toilet rooms.** (1) An appropriate number of toilet rooms, in accordance with the nature and use of a specific building or facility, shall be accessible to, and useable by, the physically handicapped.

(2) Toilet rooms shall have space to allow traffic of individuals in wheel chairs, in accordance with section 4 [69-3704].

(3) Toilet rooms shall have at least one toilet stall that:

(a) Is 3 feet wide.

(b) Is at least 4 feet 8 inches, preferably 5 feet deep.

(c) Has a door (where doors are used) that is 32 inches wide and swings out.

(d) Has handrails on each side, 33 inches high and parallel to the floor, 1½ inches in outside diameter, with 1½ inches clearance between rail and wall, and fastened securely at ends and center.

(e) Has a water closet with the seat 20 inches from the floor.

(4) Toilet rooms shall have lavatories with narrow aprons, which when mounted at standard height are useable by individuals in wheel chairs, or shall have lavatories mounted higher, when particular designs demand, so that they are useable by individuals in wheel chairs.

(5) Mirrors and shelves shall be provided above lavatories at a height as low as practicable and no higher than 40 inches above the floor, measured from the top of the shelf and the bottom of the mirror.

(6) Toilet rooms for men shall have an appropriate number of floor or wall-mounted urinals with the opening of the basin 19 inches from the floor, or shall have floor-mounted urinals that are on level with the main floor of the toilet room.

(7) Toilet rooms shall have an appropriate number of towel racks, towel dispensers, and other dispensers and disposal units mounted no higher than 40 inches from the floor.

History: En. Sec. 11, Ch. 223, L. 1965.

69-3712. Water fountains. (1) An appropriate number of water fountains or other water-dispensing means shall be accessible to, and useable by, the physically disabled.

(2) Water fountains or coolers shall have up-front spouts and controls. Water fountains or coolers shall be hand-operated or hand and foot-operated.

History: En. Sec. 12, Ch. 223, L. 1965.

69-3713. Public telephones. (1) An appropriate number of public telephones shall be made accessible to, and useable by, the physically disabled.

(2) Such telephones shall be placed so that the dial and the hand-set can be reached by individuals in wheel chairs.

History: En. Sec. 13, Ch. 223, L. 1965.

69-3714. Elevators. Elevators shall be provided and shall be accessible to, and useable by, the physically disabled at all levels normally used by the general public. Elevator control buttons shall have identifying features for the benefit of the blind. Elevators shall allow for traffic by wheel chairs.

History: En. Sec. 14, Ch. 223, L. 1965.

69-3715. Switches and controls. Switches and controls for light, heat, ventilation, windows, draperies, fire alarms and all similar controls of frequent or essential use, shall be placed within the reach of individuals in wheel chairs.

History: En. Sec. 15, Ch. 223, L. 1965.

69-3716. Identification for the blind. Appropriate identification of specific facilities within a building used by the public is essential to the blind. Raised or recessed letters or numbers shall be used to identify rooms and offices. Such identification shall be placed on the wall, to the right or left of the door, at a height between 4 feet 6 inches and 5 feet 6 inches, measured from the floor, and preferably at 5 feet. Doors that are not intended for normal use, and that are dangerous if a blind person were to exit or enter by them, shall be made quickly identifiable to the touch by knurling the door handle or knob.

History: En. Sec. 16, Ch. 223, L. 1965.

69-3717. Warning signals. (1) Audible warning signals shall be accompanied by simultaneous visual signals for the benefit of those with hearing disabilities.

(2) Visual signals shall be accompanied by simultaneous audible signals for the benefit of the blind.

History: En. Sec. 17, Ch. 223, L. 1965.

69-3718. Hazards. (1) Every effort shall be exercised to obviate hazards to individuals with physical disabilities.

(2) Access panels or manholes in floors, walks and walls can be extremely hazardous, particularly when in use, and shall be avoided where possible.

(3) When manholes or access panels are open and in use, or when an open excavation exists on a site, particularly when it is approximate to normal pedestrian traffic, barricades shall be placed on all open sides, at least 8 feet from the hazard, and warning devices shall be installed in accord with the provisions of subsection (2) of this section.

(4) Low-hanging door closers that are within the opening of a doorway when the door is open, or that protrude hazardously into regular corridors or traffic ways when the door is closed, shall be avoided.

(5) Low-hanging signs, ceiling lights and similar objects or signs and fixtures that protrude into regular corridors or traffic ways shall be avoided. A minimum height of 7 feet, measured from the floor, shall be had.

(6) Lighting on ramps shall be at least equal to that prescribed by the specifications of American Standards Association, Inc. Exit signs shall be in accordance with specifications of American Standards Association, Inc., except as modified by section 7 [69-3707] of this act.

History: En. Sec. 18, Ch. 223, L. 1965.

69-3719. Responsibility for enforcement. The responsibility for enforcement of this act shall be as follows: (1) Where state school funds are utilized—state superintendent of public instruction.

(2) Where state funds are utilized—state controller.

(3) Where funds of counties, municipalities or other political subdivisions are utilized—by the governing bodies thereof.

History: En. Sec. 19, Ch. 223, L. 1965.

CHAPTER 38—PUBLIC SWIMMING POOLS AND BATHING PLACES

Section 69-3801. Declaration of policy.
69-3802. Definitions.
69-3803. Sanitation and healthfulness—supervision by state board of health—review and approval of plans prior to construction.
69-3804. Operation and maintenance records—public health and safety information furnished board.
69-3805. Maintenance and operation in sanitary, healthful and safe manner.
69-3806. Rules and regulations—making and enforcement by state board of health.
69-3807. Rules and regulations—enforcement by health officers.
69-3808. Sanitary conditions—examination and investigation by health officials.
69-3809. Inspection reports—publication.
69-3810. Construction, operation or maintenance contrary to law—public nuisance.
69-3811. Nuisance maintained in violation of act—abatement.
69-3812. Penalty for violations.
69-3813. Separate offenses.

69-3801. Declaration of policy. It is hereby found and declared that the public health and safety requires control and regulation of swimming pools and bathing places serving the public to prevent endangering the lives and health of Montana citizens by improperly designed and operated swimming pools. It is declared the public policy of this state to extend the present laws concerning health to include public swimming pools, public bathing places, bathhouses and all related appurtenances.

History: En. Sec. 1, Ch. 161, L. 1965.

Title of Act

An act providing for the protection of the public health by authorizing the state board of health to control public swimming pools and bathing places, definitions authorizing the state board of health to supervise public swimming pools and bathing places, requiring plans to be filed with the state board of health and approval obtained before construction, requiring pools and bathing places to be operated in a sanitary, healthful and safe manner, authorizing the state board of health to make and enforce rules and regulations, authorizing county health officials to enforce rules and regulations of the state board of health, authorizing inspection, authorizing publication of reports of inspection, declaring pools and bathing places operating contrary to the provisions of this act a nuisance, authorization of nuisance abatement, setting forth penalties, repealing all acts or parts of acts in conflict with this act.

69-3802. Definitions. (a) "Public Swimming Pool" as used in this law is hereby defined as any artificial pool which shall be maintained and operated by a person or persons for the purpose of swimming, wading or bathing either free of charge or for a fee including natural hot water pools, but excluding residential swimming pools or medicinal hot water baths for individual use.

(b) "Public Bathing Place" is defined as natural or artifically constructed lakes, ponds, reservoirs, and rivers, streams, dredge cuts or similar bodies of water which are provided with natural or artificially constructed beaches and which are operated as public swimming or wading areas by any person or persons either free of charge or for a fee and which may or may not be provided with bathhouses, cabanas or change houses for use of the public.

(c) "Residential Swimming Pool" is any swimming pool located on private property under control of the home owner, the use of which is

limited to swimming or bathing by members of his family or their invited guests. Residential swimming pools are excluded from this act.

(d) "Person" means the state or any instrumentality thereof, any municipality, political subdivision, institution, school, school district, public or private corporation, partnership, individual club, organization, or other entity.

History: En. Sec. 2, Ch. 161, L. 1965.

69-3803. **Sanitation and healthfulness—supervision by state board of health—review and approval of plans prior to construction.** The state board of health, through its secretary and employees, and through local, county and district health officers, sanitarians or other authorized representatives, shall supervise the sanitation and healthfulness of public swimming pools and public bathing places. Every person planning to construct a public swimming pool or develop a public bathing area shall file a copy of the plans prior to construction with the state board of health for review and approval before construction is begun.

History: En. Sec. 3, Ch. 161, L. 1965.

69-3804. **Operation and maintenance records—public health and safety information furnished board.** Every person operating or maintaining a public swimming pool or public bathing place shall do so in a sanitary, healthful and safe manner and shall keep such records of pertinent public health and safety information regarding the operation and maintenance of the swimming pool or public bathing place as the state board of health may require. Such data to be provided said board upon forms prescribed and furnished by it.

History: En. Sec. 4, Ch. 161, L. 1965.

69-3805. **Maintenance and operation in sanitary, healthful and safe manner.** Each public swimming pool, and public bathing place, including swimming pool structures, bathhouses, appurtenances, operation, source of water supply, method of water purification, lifesaving apparatus, measures to insure safety of bathers, and measures to insure personal cleanliness of bathers shall be such that the public swimming pool is at all times sanitary, healthful and safe.

History: En. Sec. 5, Ch. 161, L. 1965.

69-3806. **Rules and regulations—making and enforcement by state board of health.** The state board of health shall make and enforce necessary rules and regulations pertaining to public swimming pools and public bathing places to effectuate the purposes of this act.

History: En. Sec. 6, Ch. 161, L. 1965.

69-3807. **Rules and regulations—enforcement by health officers.** Each local, county or district health officer and such employees as he may designate, shall enforce the rules and regulations adopted by the state board of health.

History: En. Sec. 7, Ch. 161, L. 1965.

69-3808. Sanitary conditions—examination and investigation by health officials. All persons authorized by this act or by regulations adopted under this act shall have free access, at all reasonable times, to enter all parts of the premises of a public swimming pool and public bathing place to make examination and investigation to determine the sanitary condition and whether this act or the rules and regulations adopted under this act are being violated.

History: En. Sec. 8, Ch. 161, L. 1965.

69-3809. Inspection reports—publication. The state board of health may publish the reports of inspection.

History: En. Sec. 9, Ch. 161, L. 1965.

69-3810. Construction, operation or maintenance contrary to law—public nuisance. Any public swimming pool or public bathing place constructed, operated or maintained contrary to the provisions of this law is declared a public nuisance, dangerous to public health.

History: En. Sec. 10, Ch. 161, L. 1965.

69-3811. Nuisance maintained in violation of act—abatement. Any nuisance maintained in violation of this act may be abated or enjoined in an action brought by a local, county or district health officer, or the state board of health, or it may be summarily abated in the manner provided by law for the summary abatement of other public nuisances dangerous to health.

History: En. Sec. 11, Ch. 161, L. 1965.

69-3812. Penalty for violations. Every person who violates any provision of this act, or the rules and regulations adopted pursuant thereto, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) or by imprisonment for not more than six (6) months, or both.

History: En. Sec. 12, Ch. 161, L. 1965.

69-3813. Separate offenses. Each day that a violation of this law continues is a separate offense.

History: En. Sec. 13, Ch. 161, L. 1965.

Repealing Clause

Section 14 of Ch. 161, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 15 of Ch. 161, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts are severable from the invalid part and remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 39—AIR POLLUTION

Section 69-3901. Air pollution defined.
69-3902. Air pollution as public nuisance.
69-3903. Board of health as research agency—use of federal funds.

69-3901. Air pollution defined. Air pollution is the presence in the outdoor atmosphere of substances in quantities which are injurious to

normal human, plant or animal life or to property which unreasonably and repeatedly interfere with the enjoyment of life and property; provided that all aspects of employer-employee relationship as to health and safety hazards are excluded.

History: En. Sec. 1, Ch. 254, L. 1965.

Title of Act

An act defining air pollution; declaring air pollution a public nuisance; and designating the state board of health of the state of Montana as the air pollution study and research agency for the receipt and administration of grants and gifts for air pollution research or survey programs.

69-3902. **Air pollution as public nuisance.** The discharge into the outdoor atmosphere of substances in quantities which are injurious to normal human, plant or animal life or to property is a public nuisance.

History: En. Sec. 2, Ch. 254, L. 1965.

69-3903. **Board of health as research agency—use of federal funds.** The state board of health of the state of Montana is designated as the "Study and Research Agency" to accept, receive and administer grants or other funds or gifts, on behalf of the state of Montana, given by the federal government under any federal law, or by any person, firm, corporation or association for the purpose of air pollution research or survey programs. Such funds shall be deposited with the state treasurer and held and disbursed by him to the state board of health to be used only for the purposes for which they are contributed.

History: En. Sec. 3, Ch. 254, L. 1965.

CHAPTER 40—REFUSE DISPOSAL AREAS

Section 69-4001. Legislative findings and policy.
69-4002. Definitions.
69-4003. Dumping in an unlicensed area is prohibited.
69-4004. License required.
69-4005. State board of health to approve disposal area.
69-4006. Revocation of or refusal to renew license.
69-4007. Rules and regulations—inspections and recommendations.
69-4008. Landowner's rights preserved—publicly operated disposal areas.
69-4009. Penalty for violations.
69-4010. Repeal of conflicting acts—acts preserved.

69-4001. **Legislative findings and policy.** It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated refuse disposal areas. It is declared the public policy of this state to control refuse disposal areas to protect the public health and safety.

History: En. Sec. 1, Ch. 35, L. 1965.

Title of Act

An act providing for the protection of the public health by establishing controls of refuse disposal areas, defining terms used in the act, prohibiting dumping in unlicensed areas, requiring a license to be obtained from the local, county or district health officer, requiring the state board of health to approve disposal areas, authorizing revoking the license, authorizing the state board of health to promulgate rules and regulations, excluding refuse disposal by an individual of his own refuse on his own property from this act, eliminating the payment of an annual fee by governmental agencies, setting forth payments, repealing all acts and parts of acts in conflict with this act.

69-4002. Definitions. Terms used in this act shall be defined as follows: (1) "Garbage," putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.

(2) "Refuse," all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings and solid market and solid industrial wastes.

(3) "Rubbish," nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery and similar materials.

History: En. Sec. 2, Ch. 35, L. 1965.

69-4003. Dumping in an unlicensed area is prohibited. No person, partnership, company or corporation shall hereafter dispose of any garbage, rubbish or refuse in any place except as permitted under this act.

History: En. Sec. 3, Ch. 35, L. 1965.

69-4004. License required. Each year each person, partnership, company or corporation desiring to operate a refuse disposal area shall obtain a license for operating same from the local, county or district board of health having jurisdiction. To obtain a license to operate a disposal area, application to the local, county or district board of health having jurisdiction, must be made on forms provided by it. The application shall contain the name and residence of the applicant, the location of the proposed disposal area and such other information as the state board of health may by regulation require. There shall be paid to the local, county or district board of health with each application for such license or for renewal of such license, an annual license fee of twenty-five dollars ($25). This fee is to be deposited in the general fund of the county in which the refuse disposal area is to be located.

History: En. Sec. 4, Ch. 35, L. 1965.

69-4005. State board of health to approve disposal area. Upon receipt of the application, the local, county or district board of health having jurisdiction shall notify the state board of health who will then cause to be made an inspection of the proposed site and determine if the proposed operation can comply with this act and rules and regulations adopted pursuant thereto. When the state board of health reports favorably upon the application, the local, county or district board of health having jurisdiction shall issue a license to the applicant. All licenses shall expire one year after issuance but may be renewed upon payment of an annual fee of twenty-five dollars ($25).

History: En. Sec. 5, Ch. 35, L. 1965.

69-4006. Revocation of or refusal to renew license. The local, county or distict board of health having jurisdiction may revoke or refuse to renew any license after reasonable notice and hearing if it finds that the disposal area is not operated in a sanitary manner, as set forth by this law and by the rules and regulations adopted under this law.

History: En. Sec. 6, Ch. 35, L. 1965.

69-4007. **Rules and regulations—inspections and recommendations.** The state board of health is authorized to promulgate rules and regulations for the operation of refuse disposal areas. Said regulations shall be prepared and published and shall contain sanitary standards for disposal areas. The state board of health shall cause all licensed disposal areas to be inspected and recommended to the local, county or district board of health action which may be taken to enforce the provisions of this act.

History: En. Sec. 7, Ch. 35, L. 1965.

69-4008. **Landowner's rights preserved—publicly operated disposal areas.** This act shall not be construed to prohibit any person from disposing of garbage, rubbish or refuse upon his own land as long as such disposal does not create a nuisance. Any incorporated city, town, rural improvement district or county may establish a disposal area and operate same without paying the annual license fee, but must meet all other requirements of this act.

History: En. Sec. 8, Ch. 35, L. 1965.

69-4009. **Penalty for violations.** Any person violating this act or regulations prescribed by the state board of health under this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars ($50), nor more than five hundred dollars ($500). Each day upon which a violation of this act occurs shall be considered a separate offense.

History: En. Sec. 9, Ch. 35, L. 1965.

69-4010. **Repeal of conflicting acts—acts preserved.** All acts and parts of acts in conflict herewith are hereby repealed, except that section 32-1014 and section 94-3542, R. C. M. 1947, shall in no way be affected by this act.

History: En. Sec. 10, Ch. 35, L. 1965.

Separability Clause

Section 11 of Ch. 35, Laws 1965 read "It is the intent of the legislative assembly that if a part of this is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect, and all valid applications that are separable from the invalid applications."

REVISED CODES OF MONTANA

VOLUME 4
Part 2
1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 4 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 4 (PART 2) THROUGH VOLUME 397, PACIFIC REPORTER (2ND SERIES)

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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

70-104. (3882) **Power to prescribe rules of procedure—judicial power.**

Informal Hearing

Fundamentals of a fair hearing, required by section 27, article III of the Montana constitution were denied parties opposing rate increase when a hearing was held by the public service commission without the presence of the opponents, and when the testimony of that hearing was not spread on the record. Cascade County Consumers Assn. v. Public Service Commission, — M —, 394 P 2d 856, 864. (Dissenting opinion, — M —, 394 P 2d 856, 875.)

Posthearing Audit

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. Cascade County Consumers Assn. v. Public Service Commission, — M —, 394 P 2d 856, 869. (Dissenting opinion, — M —, 394 P 2d 856, 875.)

70-106. (3884) **Power of commission to ascertain property values.**

Leaseholds

Value of gas leases was properly included in rate base for power company seeking increased natural gas rate where there was ample testimony as to the leaseholds being used and useful to support the public service commission. Cascade County Consumers Assn. v. Public Service Commission, — M —, 394 P 2d 856, 870. (Dissenting opinion, — M —, 394 P 2d 856, 875.)

70-128. (3906) **Action to set aside rates or charges fixed by commission.**

Jurisdiction

Where neither the parties nor the facts are the same in two cases to set aside orders of public service commission, and no effort to consolidate the two cases was ever made, court in one case was not deprived of jurisdiction to enter judgment on theory that other court had first obtained jurisdiction of the appeal. Cascade County Consumers Assn. v. Public Service Commission, — M —, 394 P 2d 856, 863. (Dissenting opinion, — M —, 394 P 2d 856, 875.)

CHAPTER 4—TELEVISION

Section 70-426. Annexation of contiguous areas—petition—hearing—resolution

70-426. Annexation of contiguous areas—petition—hearing—resolution. The boundaries of a television district created by authority of Chapter 4 of Title 70 of the Revised Codes of Montana, 1947; may be altered and outlying areas be annexed from territory contiguous thereto in the following manner;

(a) A petition shall be signed by owners of television sets within the proposed area, equal in number to not less than fifty-one per cent (51%)

of the registered electors who are owners of television sets within the area to be annexed;

(b) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district;

(c) The petition shall be transmitted to the clerk and recorder and the hearing and notice thereof shall be the same as provided by sections 70-412 through 70-414, R.C.M. 1947;

(d) After the hearing the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

History: En. Sec. 1, Ch. 48, L. 1963.

Title of Act

An act providing that boundaries of a television district created by authority of Chapter 4 of Title 70 of the Revised Codes of Montana, 1947; may be altered and outlying areas may be annexed from territory contiguous to an existing television district; and providing the procedure for such annexation.

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5. Public Welfare Act part 4—to provide for aid to needy dependent children in conformity with part 4 of the Federal Social Security Act of 1935 or as amended, 71-501.
9. Public Welfare Act part 8—appropriations, disposition of funds and disbursements, 71-901.
10. Public Welfare Act part 9—to provide for payments to persons having silicosis, 71-1003, 71-1004, 71-1008.
15. Medical aid for the aged, 71-1501 to 71-1510.
16. Economic opportunity and poverty relief, 71-1601 to 71-1604.

CHAPTER 1—COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

Section 71-106. Support of poor and indigent persons—tax levy.
71-123. Duty of county clerk.

71-106. (4465.4) **Support of poor and indigent persons—tax levy.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually, from each resident of the county, between the ages of twenty-one (21) and sixty (60) years a poll tax of two dollars ($2.00) at a meeting of the board of county commissioners held in December of any year, to become effective as of January first of the following calendar year, and a tax on property not exceeding three-fifths (3/5) of one per cent (1 %), which last mentioned levy shall be made at the time other tax levies are made on property, as provided by law, or either of such levies when both are not required, and to expend not to exceed five per cent (5 %) of any such levy for the collection of said tax, or of any part thereof. Whenever a resolution is adopted levying a per capita tax the clerk of the board shall immediately prepare and deliver copies thereof to the county assessor and county treasurer. The county assessor after receiving such copy of resolution, when making an assessment of any property belonging to any

person liable for the payment of such per capita tax must enter on the assessment list, and also on any statement given the taxpayer, showing the value of the property assessed, the amount of such per capita tax, and the county treasurer when collecting the taxes on such property shall at the same time collect the amount of such per capita tax as shown on said statement.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965. See history of Sec. 16-1001.

Amendment

The 1965 amendment inserted "except as otherwise provided in other parts of this act" after "indigent sick" near the beginning of the second paragraph.

Temporary Additional Tax Levy (Laws 1965, Ch. 221)

An act to authorize, in certain instances, the boards of county commissioners to levy an additional tax of not to exceed ten and one-half (10.5) mills for the county poor funds; providing for an effective date and repealing all acts and parts of acts in conflict herewith.

Section 1. Whenever the boards of county commissioners of counties coming within the provisions of this act find that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy, not to exceed ten and one-half (10.5) mills, or so much thereof as may be necessary, to meet such expenditures, as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Section 2. On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is found by the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget, together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Section 3. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents and if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificates to such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

Section 4. This act shall be in full force and effect from the first day of July, 1965 to the thirtieth day of June, 1967.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Prior laws, identical in nature, were Laws 1955, Ch. 73, in force from July 1, 1955 to June 30, 1957; Laws 1957, Ch. 36, in force from July 1, 1957 to June 30, 1959; Laws 1959, Ch. 46, in force from July 1, 1959 to June 30, 1961; Laws 1961, Ch. 10, in force from July 1, 1961 to June 30, 1963; and Laws 1963, Ch. 262, in force from July 1, 1963 to June 30, 1965.

71-107. (4465.5) Poor farm.

Cross-References

Power of county commissioners to lease county property for operation of a boarding home or nursing home for aged persons, sec. 16-1036.

Power of county commissioners to operate boarding home or nursing home for the aged, secs. 16-1037, 16-1038.

71-123. (4539) Duty of county clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such soldier, sailor, or marine. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of Congress, and to cause the same to be placed at the head of the grave of such soldier, sailor, or marine, the expense of which shall not exceed the sum of twenty dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 71-121 for the burial expenses.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1963.

Amendment

The 1963 amendment increased the allowance specified near the end of the second sentence from $10 to $20.

CHAPTER 2—PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section 71-202. Appointment of state board—creation—salary.
71-203. Powers and duties of the state board.
71-209. Powers and duties of the state administrator.
71-211. Board to act as agency of federal government—assistance to ward Indians.
71-216. Powers and duties of the county board.
71-217. Staff personnel—how selected, paid and controlled—dismissal.
71-222. Per capita and millage taxes to be levied—expenditures—budgets.
71-230. Method of issuing assistance grants—reimbursement.
71-241. Agreement for lien on real property of recipient of public assistance other than recipients of general relief or aid to dependent children.

71-202. Appointment of state board—creation—salary. (a) and (b). * * * [Same as parent volume.]

(c) The members of the state board shall take and subscribe to the constitutional oath of office.

(d) and (e). * * * [Same as parent volume.]

History: En. Sec. 2, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 26, L. 1953; amd. Sec. 1, Ch. 117, L. 1957; amd. Sec. 29, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from the end of subsection (c) a clause reading, "and shall furnish a surety company bond conditioned upon the faithful and proper discharge of their duties in the amount of five thousand dollars ($5,000.00) each, running to the state of Montana, the premium of which shall be paid by the state."

71-203. Powers and duties of the state board. (1) In co-operation with the governor the state board shall select and appoint an administrative officer for the state department of public welfare who shall be known as the state administrator and who shall have such tenure of office, salary and administrative per diem and travel expense as the state board may establish, with the exception that the salary of said state administrator shall not exceed five thousand ($5,000.00) dollars per year. The state administrator shall be selected and appointed with due regard to the edu-

cation, training and ability necessary in public welfare administration and organization and shall have been a resident of the state of Montana at least five years prior to his appointment.

(2) Within six months after the adoption and approval of this act it shall be the duty of the state board to establish and maintain minimum standards of service and personnel and to formulate salary schedules for the classified personnel, based upon training, experience and ability, for employees selected for positions in the state office of the state department and in county departments.

A merit system when practical but not later than one (1) year from and after the effective date of this act shall be established and maintained pertaining to qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules and the state board shall cause examinations to be held from time to time throughout the state for the purpose of establishing an available qualified list in order of merit of persons eligible for appointment. Personnel standards shall conform in so far as possible with general standards as established or required by the federal social security board.

History: En. Subd. (a) and (b), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 30, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from subsection (1) a final sentence reading, "The state administrator shall be bonded in the sum of twenty-five thousand ($25,000.00) dollars, the premium of which will be paid by the state."

71-204. Authority of board—disclosure of certain information forbidden.

References

Cited in State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 M 209, 376 P 2d 1002, 1003.

71-209. Powers and duties of the state administrator. (a) The administrator shall be the executive and administrative officer of the state department of public welfare and shall act as secretary of the state board. Before each regular biennial meeting of the legislative assembly he shall prepare and submit to the state board of public welfare for its consideration budget estimates of all funds required to be appropriated by the legislative assembly for the operation of the department during the two next ensuing fiscal years as fiscal years are defined by section 59-701. These budget estimates shall contain all information necessary for their consideration. After these budget estimates have been considered by the state board of public welfare, the administrator shall submit these budget estimates to the state budget director with requests for appropriations.

After the close of the fiscal year in each even-numbered calendar year, the state administrator shall prepare a report to the governor of the state for the two preceding fiscal years, showing the operations of the department, furnishing information about all its principal activities giving the source and amounts of all funds received and the purposes for which they have been expended. It shall contain such statistical information and supplementary data as the administrator may deem pertinent or the governor may request. The report shall also contain such recommendations for legislation as experience may indicate to be desirable. The report shall be printed and submitted to the governor not later than October 15.

The administrator shall prepare such interim reports as he may deem proper or the governor may require.

(b). * * * [Same as parent volume.]

History: En. Sec. 6, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 129, L. 1939; subd. (b) amd. Sec. 2, Ch. 117, L. 1941; amd. Sec. 1, Ch. 255, L. 1965.

Amendment

The 1965 amendment deleted "but not later than November 1" after "considered by the state board of public welfare" in the last sentence of the first paragraph of subsection (a); substituted "state budget director" for "state board of examiners" near the end of the first paragraph of subsection (a); and deleted from the second paragraph of subsection (a) a former fourth sentence pertaining to the report for the period ending June 30, 1940.

71-211. Board to act as agency of federal government—assistance to ward Indians. [The state department shall] act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the Federal Social Security Act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

The counties shall not be required to reimburse the state department any portion of old-age assistance, medical assistance for the aged, aid to needy dependent children or aid to needy blind or aid to the totally disabled paid to ward Indians, further provided that the federal government may reimburse the state of Montana in behalf of counties, providing general relief to ward Indians, a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status. A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the Federal Social Security Act is amended to define a "ward Indian," such definition shall supersede the foregoing definition.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "medical assistance for the aged" after "old-age assistance" near the beginning of the second paragraph; and inserted the bracketed words at the beginning of the section.

71-216. Powers and duties of the county board. The county board of public welfare shall be responsible for establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board. The county board of public welfare shall review the determinations of eligibility and amount of payment to or on behalf of individuals made by the staff of the county department for conformity with the aforesaid rules and regulations. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by said board.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "or on behalf of" after "amount of payment to" in the second sentence.

71-217. Staff personnel—how selected, paid and controlled—dismissal. Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made to its public assistance staff personnel, except that, under circumstances prescribed by the state department of public welfare, the reimbursement by the county board of public welfare may be less than one-half. All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963.

Amendment

The 1963 amendment added, at the end of the first sentence in the second paragraph, the clause permitting the state board to reduce reimbursements by county boards to less than one-half.

Repealing Clause

Section 2 of Ch. 44, Laws 1963 repealed all acts and parts of acts in conflict therewith.

71-222. Per capita and millage taxes to be levied—expenditures—budgets. It is hereby made the duty of the board of county commissioners in each county to levy the per capita tax of two dollars ($2.00), and the six (6) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activi-

ties of the county and to reimburse the state department of public welfare for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for each and all of such activities.

As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state administrator of public welfare, and it shall be his duty, at any time before the final adoption of the budget, to make such recommendations with regard to changes in any part of the budget relating to the county poor fund as is deemed necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

The state administrator shall promptly examine the preliminary budget so submitted to him in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. It is hereby made the duty of the board to make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

The board of county commissioners shall not have the right to make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state administrator of public welfare to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; provided, however, that expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by the per capita tax or the six (6) mill levy provided for in paragraph one of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the state board of health, and, when such expenditure has been approved by the state public welfare department.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963.

Amendment

The 1963 amendment added the proviso to the first sentence of the final paragraph and the entire second sentence of the final paragraph.

Repealing Clause

Section 2 of Ch. 239, Laws 1963 repealed all acts and parts of acts in conflict therewith.

71-230. Method of issuing assistance grants—reimbursement. (a) Checks in payment of public assistance, as provided for in each part of this act, with the exception of general relief, shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee and the original monthly payment shall be from the state public welfare accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.

(b) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department must make such reimbursement to the state department within twenty (20) days after such claim is presented.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965.

Amendment

The 1965 amendment deleted "and with the exception of old-age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled payments made in behalf of such recipients for medical care" after "with the exception of general relief" in the first sentence of subsection (a); added "or the appropriate vendor" at the end of the first sentence of subsection (a); added "or vendor" at the end of subsection (a); inserted "to recipients" after "granted in the county" in the first sentence of subsection (b); added "and for vendor medical payments made on behalf of recipients in the previous month" at the end of the first sentence of subsection (b); and deleted former subsection (c), for text of which see parent volume.

71-241. Agreement for lien on real property of recipient of public assistance other than recipients of general relief or aid to dependent children. No application for a public assistance grant except applications made pursuant to chapter 5, Title 71, Revised Codes of Montana, 1947 (aid to dependent children), and chapter 3, Title 71, Revised Codes of Montana, 1947 (general relief), and for vendor medical payments in behalf of individuals, shall be approved unless the applicant shall execute and deliver with such application an agreement, in such form as the state board of public welfare shall prescribe, acknowledging and agreeing that the amount of all assistance thereafter paid to the applicant, from whatever source such assistance may be derived, shall constitute an obligation and indebtedness of the applicant to the state and county which shall be secured by a lien upon all real property of the applicant then owned or acquired while a recipient of such assistance.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 15, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "and for vendor medical payments in behalf of individuals" after the reference to chapter 3 of Title 71; and made a minor change in punctuation.

CHAPTER 3—PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHERWISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section 71-302. Eligibility requirements for general relief.
71-307. Relief by check or disbursing orders.
71-308. Medical aid and hospitalization.
71-309. Primary obligations of the board of county commissioners.

71-302. Eligibility requirements for general relief. An applicant to be eligible for general relief must have resided in the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence. If a person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of Montana. Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be counted in determining the matter of county residence.

History: En. Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 11, Ch. 129, L. 1939; amd. Sec. 4, Ch. 117, L. 1941; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 1, Ch. 99, L. 1963.

Amendment

The 1963 amendment added the last sentence.

71-307. Relief by check or disbursing orders. All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. It is further provided, however, that if the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform such work at the prevailing rate of wages paid by that county for similar work to be paid from the county poor fund in place of granting him general relief.

The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and is authorized to enter into such agreements with the industrial accident board as may be necessary to carry out the provisions of this section.

Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for a period of one (1) week for each refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963.

Amendment

The 1963 amendment substituted "a recipient of" and "recipient" for "an applicant for" and "applicant" in the second sentence of the first paragraph; inserted "paid by that county for similar work" after "prevailing rate of wages" near the end of the first paragraph; and added the second and third paragraphs.

71-308. Medical aid and hospitalization. Medical aid and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county in full upon proper claim being made to the department of public welfare; provided, further, that in all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare.

The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by such board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of such medical attendance.

The board of county commissioners shall have the responsibility of making suitable arrangements to provide respectable burial for those for whom such expenses are not otherwise available.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "except as otherwise provided in other parts of this act" near the end of the first sentence of the first paragraph.

Wandering Child

County properly brought mandamus action to compel state board of public welfare to reimburse it for medical and hospital expenses for a wandering thirteen-year-old child from another state who roamed from place to place for approximately one month, without means of sup-

port, when she threw herself in front of a moving automobile and sustained the injuries for which the county paid the expenses. State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 M 209, 376 P 2d 1002, 1004.

71-309. Primary obligations of the board of county commissioners. Except as otherwise provided in other parts of this act, it is hereby declared to be the primary legal duty and financial obligation of the board of county commissioners to make such tax levies and to establish such budgets in the county poor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent residents as are in need of institutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provisions for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges against and payable from the county poor fund.

History: En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951; amd. Sec. 17, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "Except as otherwise provided in other parts of this act" at the beginning of the section.

CHAPTER 4—PUBLIC WELFARE ACT PART 3—TO PROVIDE FOR OLD-AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-402. Eligibility requirements for old-age assistance.
71-405. County share of participation.
71-406. Investigation of applications.

71-402. Eligibility requirements for old-age assistance. Old-age assistance shall be granted any person who:

(a) to (e). * * * [Same as parent volume.]

(f) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act at any time within five (5) years immediately prior to the filing of application for assistance pursuant to the provisions of this act;

(g) Is not receiving aid to dependent children, aid to needy blind or aid to the permanently and totally disabled, or medical aid for the aged, for himself or herself.

History: En. Sec. 2, Part 3, Ch. 82, L. 1937; Subd. (g) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 15, Ch. 199, L. 1951; amd. Sec. 18, Ch. 212, L. 1965.

Amendment

The 1965 amendment increased the period specified in paragraph (f) from two to five years; and inserted "or medical aid for the aged" near the end of paragraph (g).

71-405. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved old-age assistance grants paid by the state department to persons in the county each month, exclusive of the federal share. Each county department shall reimburse the state department in the amount of one-half (½) of the approved old-age assistance vendor medical payments on behalf of persons in the county each month, exclusive of the federal share. Such reimbursements shall be credited to the old-age assistance account of the state department.

History: En. Sec. 5, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 69, L. 1947; amd. Sec. 1, Ch. 155, L. 1949; amd. Sec. 18, Ch. 199, L. 1951; amd. Sec. 3, Ch. 71, L. 1957; amd. Sec. 1, Ch. 5, L. 1961; amd. Sec. 19, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted the second sentence.

71-406. Investigation of applications. Whenever a county public welfare department receives an application for an old-age assistance grant or for medical care on behalf of an old-age assistance recipient, an investigation shall be promptly made. The investigation of each applicant for old-age assistance shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the assistance and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 6, Part 3, Ch. 82, L. 1937; amd. Sec. 19, Ch. 199, L. 1951; amd. Sec. 20, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "or for medical care on behalf of an old-age assistance recipient" in the first sentence.

CHAPTER 5—PUBLIC WELFARE ACT PART 4—TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-501. "Dependent child" defined.

71-501. "Dependent child" defined. The term "dependent child" means a child (A) under the age of eighteen (18), or (B) under the age of twenty-one (21) who is a student under the regulations prescribed by the state welfare department and such children (A and B above) who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

Aid to dependent children shall not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of the state of Montana by the fact that such child is living in the home of his or her father, who is in the opinion of the county board of public welfare of the appropriate county unemployable nor by the fact that such child is living in the home of a head of a household who is, at the time, receiving job training under the laws of the state of Montana; nor shall the benefits which would otherwise accrue to such child for aid to dependent children under the laws of the state of Montana be reduced by reason of either such cause.

History: En. Subd. (a) Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965.

Amendment

The 1965 amendment inserted the designation for clause (A); inserted clause (B) and the words "and such children (A and B)"; added the second paragraph; and made a minor grammatical change.

Effective Date

Section 3 of Ch. 255, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

CHAPTER 9—PUBLIC WELFARE ACT PART 8—APPROPRIATIONS, DISPOSITION OF FUNDS AND DISBURSEMENTS

Section 71-901. Receipt of funds.

71-901. Receipt of funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money appropriated by the legislature for public welfare purposes, all money received from the United States government for public welfare purposes, and all money received from any other source for the purposes set forth in the Public Welfare Act shall be paid into the state treasury to the credit of the state department of public welfare.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "to the credit of the state department of public welfare" for "and constitute a special fund to be designated as the public welfare fund" at the end of the section.

CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section 71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.
71-1004. Amounts of payments.
71-1008. Conformity with acts of federal government.

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payments shall be made under this act to any person who:

(a) to (c). * * * [Same as parent volume.]

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Compensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of ninety dollars ($90.00) hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than ninety dollars ($90.00), then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, and ninety dollars ($90.00) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965.

Amendment

The 1965 amendment increased the monthly amounts specified in paragraph (d) from $75 to $90.

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the industrial accident board; been determined by the industrial accident board to be entitled to a payment under this chapter for silicosis, shall be granted a payment by the said industrial accident board of ninety dollars ($90.00) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965.

Amendment

The 1965 amendment increased the monthly payment specified in the first sentence from $75 to $90.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the industrial accident board of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed ninety dollars ($90.00) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965.

Amendment

The 1965 amendment increased the maximum monthly payment specified in the final sentence from $75 to $90.

Repealing Clause

Section 4 of Ch. 267, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 15—MEDICAL AID FOR THE AGED

Section 71-1501. Provision for administration.
71-1502. Eligibility requirements for medical aid for the aged.
71-1503. Amount of assistance.
71-1504. Application for assistance.
71-1505. County share of participation.
71-1506. Investigation and determination of eligibility.
71-1507. Redetermination of eligibility.
71-1508. Change of residence of person receiving medical assistance for the aged.
71-1509. Confidential records.
71-1510. Exclusion of lien.

71-1501. Provision for administration. (a) The state department of public welfare (hereafter called "state department") is hereby authorized and empowered to administer and supervise a program of medical aid for the aged (M A A) and old-age assistance (O A A) under the powers, duties and functions provided in sections 71-201 through 71-240, R. C. M. 1947.

(b) The state department shall adopt appropriate rules and regulations, not inconsistent with this act, to administer and supervise the said program, and shall define by rules and regulations medical aid for the aged. Such definition shall include, but is not limited to the following:

(1) Inpatient hospital services;

(2) Licensed nursing home services;

(3) The professional services of a licensed physician, dentist, osteopath, optometrist, chiropractor, chiropodist or physical therapist;

(4) Outpatient hospital or clinic services;

(5) Home health care services;

(6) Physical therapy and related services;

(7) Dental services;

(8) Laboratory and X-ray services;

(9) Prescribed drugs, eyeglasses, dentures and prosthetic devices;

(10) Diagnostic, screening and preventive services;

(11) Any additional medical service or aid allowable under or provided by the Federal Social Security Act.

The foregoing services shall be provided to the fullest extent that moneys appropriated, collected, accumulated or matched from any source by the state department will allow. Priorities of the foregoing medical services or aids, if funds are inadequate, shall be determined by the state department.

(c) The state department shall advise with and consult at least semiannually with a council composed of duly qualified members of the following organizations: The Montana medical association; the Montana state dental association; the Montana hospital association; the Montana state pharmaceutical association; the Montana nursing home association; the Montana association of county commissioners; the Montana nurses association.

Each such organization shall select a member of its organization to serve on the council and one (1) alternate to serve in his absence. Three (3) additional members shall be appointed by the governor, for terms of three (3) years, one (1) of whom shall be a person engaged in supplying medical aid and services, other than members of the above organizations, and two (2) from the public at large.

(d) The state department shall provide for professional freedom of those licensed practitioners who provide medical care and services under this act, and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care or services; provided, that in those counties where county hospitals, supported by county funds, provide adequate equipment, and facilities for the needs of any recipient, the county board of public welfare may require that the recipient be treated or cared for at such county hospital, if suitable vacancies exist in such county hospital.

(e) The state department may, by suitable rules and regulations, provide for processing, investigation and payment of claims under such program of medical aid for the aged with any state or private agency.

History: En. Sec. 1, Ch. 212, L. 1965.

Title of Act

An act to provide for medical assistance for the aged in conformity with Title I of the Federal Social Security Act of 1935, as amended; providing for the administration of the act by the state department of public welfare and the county departments of public welfare; providing eligibility requirements for assistance under the act; providing for counties' share of participation under the act; and amending sections 71-106, 71-211, 71-216, 71-230, 71-241, 71-308, 71-309, 71-402, 71-405 and 71-406, R. C. M. 1947, to provide vendor payment of medical care for recipients of old-age assistance.

71-1502. Eligibility requirements for medical aid for the aged. Medical aid for the aged shall be granted to any person who: (a) Is sixty-five (65) years of age or over.

(b) Resides in the state of Montana, including residents temporarily absent from the state.

(c) Is not concurrently a recipient of old-age assistance under sections 71-401 through 71-413, R. C. M. 1947.

(d) Is in need of medical care or services, as such need may be determined by an attending licensed physician or surgeon, with necessary consultation; or by the county board of public welfare, acting under rules and regulations of the state department, not inconsistent with this act.

(e) Is not receiving medical care or treatment for mental illness or tuberculosis at a state institution at public expense, or is not receiving medical care and services at any state or federal institution at public expense.

(f) Is an unmarried applicant or is separated from his or her spouse and whose income, after deduction of medical expenses paid by the applicant, does not exceed twenty-five hundred ($2,500) dollars during the twelve (12) month period prior to application; or is a married applicant whose income, after deductions of medical expenses incurred combined with the income of his spouse (provided they are living together) does not exceed three thousand ($3,000) dollars. Income shall not include shelter value of the residence occupied by applicant, nor the value of gifts or services contributed to applicant, nor gratuitous payments received from members of his family.

(g) Is an unmarried applicant or is separated from his or her spouse whose resources do not exceed five thousand ($5,000) dollars; or is a married applicant living with his or her spouse and their combined resources do not exceed the value of ten thousand ($10,000) dollars. The value of resources shall be the current market value minus any encumbrances against such resources. In determining resources, there shall be excluded real property occupied as a residence under the unencumbered value of fifteen thousand ($15,000) dollars; household goods and furnishings, an automobile, personal belongings and tools or equipment necessary for a trade, occupation or profession, and the cash values of life insurance policies not in excess of seven thousand five hundred ($7,500) dollars.

History: En. Sec. 2, Ch. 212, L. 1965.

71-1503. Amount of assistance. The amount of medical aid for the aged granted in behalf of any person shall be determined by a county

department of public welfare according to the rules and regulations and standards of assistance established by the state department.

History: En. Sec. 3, Ch. 212, L. 1965.

71-1504. Application for assistance. Application for assistance under this part shall be made to the county office of the county department in the county in which the person is residing. The application shall be presented in the manner and on the form prescribed by the state department. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 4, Ch. 212, L. 1965.

71-1505. County share of participation. Each county department shall reimburse the state department in the amount of one-half (½) of the approved medical aid for the aged payments paid by the state department in behalf of persons in the county each month, exclusive of the federal share. Such reimbursement shall be credited to the medical aid for the aged account of the state department.

History: En. Sec. 5, Ch. 212, L. 1965.

71-1506. Investigation and determination of eligibility. The county department shall promptly investigate and determine the eligibility of each applicant under this act. Each applicant should be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this act. The county public welfare board shall review the determination of eligibility or noneligibility made by the county department. Aid shall be furnished promptly to eligible persons. Each applicant shall receive written notice of the decision concerning his application and right of appeal shall be secured to the applicant under the procedures of section 71-223, R. C. M. 1947.

History: En. Sec. 6, Ch. 212, L. 1965.

71-1507. Redetermination of eligibility. All medical aid for the aged cases approved under this part shall be reviewed as often as shall be required under the rules and regulations of the state department.

History: En. Sec. 7, Ch. 212, L. 1965.

71-1508. Change of residence of person receiving medical assistance for the aged. A recipient who moves his residence to another county in this state shall continue to receive assistance, with the approval of the state department. The county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 8, Ch. 212, L. 1965.

71-1509. Confidential records. All applications, information and records concerning any applicant or recipient of medical assistance for the aged under the provisions of this act shall be confidential and shall not

be disclosed nor used for any purpose not directly connected with the administration of medical assistance for the aged. The violation of this provision is hereby made a misdemeanor and is punishable as such.

History: En. Sec. 9, Ch. 212, L. 1965.

71-1510. Exclusion of lien. No applicant hereunder shall be required to execute an agreement for lien on his real property. If an eligible person receives medical aid under this act, and dies leaving no surviving dependent or spouse, the state department shall be entitled to recover the amount of assistance paid from the estate by claiming the same in the estate administration proceedings. Recoveries shall be prorated to the county involved in medical assistance in the proportion that it contributed to the medical assistance.

History: En. Sec. 10, Ch. 212, L. 1965.

CHAPTER 16—ECONOMIC OPPORTUNITY AND POVERTY RELIEF

Section 71-1601. Purpose and intent of act.
71-1602. Agreements with federal agencies authorized.
71-1603. Expenditure of public funds to carry out agreements.
71-1604. City-county commission authorized—powers.

71-1601. Purpose and intent of act. It is the purpose of this act to enable the state of Montana, and the counties, cities, towns, school districts and other governmental subdivisions of the state, and other organizations or agencies authorized to receive federal assistance under Public Law 88-452, 88th Congress, to secure for the citizens of Montana the benefits offered by the United States government to the several states and their citizens in the law of August 20, 1964 (Public Law 88-452 of the 88th Congress; 78 Stats. 508) for economic betterment and the relief of poverty. It is the intent of this act to grant to the state and its subdivisions the widest possible authority, within the limits set by law, to co-operate and combine their efforts with those of the appropriate federal agencies, and to comply with any federal regulations, not in conflict with the laws of the state of Montana, to carry out the purposes of the congressional act and secure the resulting benefits for Montana and its people.

History: En. Sec. 1, Ch. 263, L. 1965.

Compiler's Note

Public Law 88-452 of the 88th Congress may be found at 42 U. S. Code 2711 to 2981.

Title of Act

An act to authorize and empower counties, cities, towns, school districts or other municipal subdivisions of the state of Montana, and agencies, departments, offices and divisions of the state government, and other agencies authorized to receive federal assistance under Public Law 88-452, 88th Congress, individually or in combination, to enter into and carry out contracts, agreements and plans with agencies and departments of the United States government and to expend moneys to implement and secure the benefits of Public Law 88-452 of the 88th Congress, enacted August 20, 1964 (78 Statute 508), known as the "Economic Opportunity Act of 1964."

71-1602. Agreements with federal agencies authorized. The state of Montana, and all offices, agencies, departments and divisions thereof, and all counties, cities, towns, school districts and other governmental subdivisions of the state, and other organizations or agencies authorized to

receive federal assistance under Public Law 88-452, 88th Congress, singly or in combination, are hereby authorized and empowered, within the limits set by the respective laws governing them, to enter into and carry out contracts, agreements and plans with any authorized agency of the United States government for the implementation and operation within the areas of their respective jurisdictions of the act of Congress of August 20, 1964 (Public Law 88-452 of the 88th Congress; 78 Stats. 508).

History: En. Sec. 2, Ch. 263, L. 1965.

71-1603. Expenditure of public funds to carry out agreements. The agencies of the state and local government enumerated in the preceding section may, within the limits of the laws governing their respective authorities to raise and expend public moneys, budget for, and/or expend public moneys in order to enter into and carry out contracts, agreements and plans under this act and Public Law 88-452. Any such expenditures must be made from the budgets, budget items or appropriations set up for the general purpose to be served by the project.

History: En. Sec. 3, Ch. 263, L. 1965.

71-1604. City-county commission authorized—powers. The city council or councils of a city or cities within a county and the county commissioners of the county may create a city-county commission to effect the purposes of this act. Such city-county commission is authorized to:

(1) Make contracts and agreements with United States government agencies for the purpose of carrying out the intent of this act;

(2) Accept and expend public and private funds made available to such commission for the purpose of carrying out the intent of this act.

History: En. Sec. 4, Ch. 263, L. 1965.

Effective Date

Section 5 of Ch. 263, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

TITLE 72—RAILROADS

Chapter 1. Railroads—regulation by board of railroad commissioners, 72-102.
2. Railroad companies—general powers and duties, 72-211, 72-224.

CHAPTER 1—RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

Section 72-102. Oath.

72-102. (3780) **Oath.** Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in section 1, article XIX, of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

History: En. Sec. 2, Ch. 37, L. 1907; re-en. Sec. 4364, Rev. C. 1907; re-en. Sec. 3780, R. C. M. 1921; amd. Sec. 31, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted second and third sentences reading, "The members of said board shall each give a bond to the state in the sum of five thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of their respective offices. The secretary of the board shall give a like bond in the sum of one thousand dollars."

72-106. (3784) Repealed.

Repeal

This section (Sec. 6, Ch. 37, L. 1907), relating to salaries of the commissioners, the secretary, and the stenographer, was repealed by Sec. 1, Ch. 129, Laws 1963, and by Sec. 3, Ch. 212, Laws 1963.

72-108 to 72-110. (3786 to 3788) Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 109, L. 1919; Sec. 1, Ch. 90, L. 1927), relating to salaries of employees of the board, were repealed by Sec. 1, Ch. 129, Laws 1963.

72-117. (3795) Making schedules effective.

Publication and Notice

The board of railroad commissioners is not required, when acting upon a petition or application for reduced rail rates, to cause publication and to give notice pursuant to this section and section 72-118, in advance of any action on such petition or prior to issuance of any authorization thereon. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, — M —, 394 P 2d 758, 760.

72-118. (3796) Power to alter classification or rate, etc.

Publication and Notice

The requirement of this section for publication and notice obtains only in the event the board of railroad commissioners makes or establishes any increase or raise in rate of charge for the transportation of freight. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, — M —, 394 P 2d 758, 760.

The board of railroad commissioners is not required, when acting upon a petition or application for reduced rail rates, to cause publication and to give notice pursuant to this section and section 72-117, in advance of any action on such petition or prior to issuance of any authorization thereon. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, — M —, 394 P 2d 758, 760.

72-144. (3821) Repealed.

Repeal

This section (Sec. 1, Ch. 2, L. 1917), relating to rates for the transportation of prisoners, was repealed by Sec. 101, Ch. 199, Laws 1965.

72-164. (3842) **Railroad commission may order electric signal, etc.**

References

Hannigan v. Northern Pacific Ry. Co., 142 M 335, 384 P 2d 493.

CHAPTER 2—RAILROAD COMPANIES—GENERAL POWERS AND DUTIES

Section 72-211. May borrow money and secure payment.
72-224. May issue and secure bonds.

72-211. (6513) **May borrow money and secure payment.** Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sum of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. [Effective January 1, 1965.]

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R. C. M. 1921; amd. Sec. 11-148, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted a second sentence reading, "And if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said corporation of whatever kind then existing, or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held, and enforced in the same manner as mortgages upon real estate now are held and enforced"; and made a minor change in phraseology.

72-224. (6526) **May issue and secure bonds.** Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities, or obligations, and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises, as the board of directors may determine or direct. [Effective January 1, 1965.]

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R. C. M. 1921; amd. Sec. 11-149, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted from the end of the section clauses reading, "and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be and remain a valid lien upon the property, rights, and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights, and franchises owned or possessed by the corporation at the time of its execution, irrespective of the law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held, and enforced in the same manner as mortgages of real estate; and the record thereof in the office of the secretary of state shall be notice of its existence and contents to all persons, without any further record thereof, and it

shall be the duty of the secretary to record in his office any such mortgage or deed of trust, when presented for that purpose"; and made minor changes in phraseology and punctuation.

CHAPTER 3—LEASES, SALES AND MORTGAGES OF RAILROAD EQUIPMENT AND ROLLING STOCK

72-303. (6535) Repealed.

Repeal

This section (Sec. 3, p. 102, L. 1883; Sec. 1, Ch. 53, L. 1947), relating to chattel mortgages of railroad equipment, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

72-305 to 72-307. (6537 to 6539) Repealed.

Repeal

These sections (Secs. 1 to 3, pp. 148, 149, L. 1893; Sec. 1, Ch. 148, L. 1923; Sec. 2, Ch. 53, L. 1947; Sec. 14, Ch. 117, L. 1961), relating to conditional sales and chattel mortgages of railroad equipment, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 73—RECORDING TRANSFERS

Chapter 2. Effect of recording or failure to record conveyance of real property, 73-208, 73-209.

CHAPTER 1—RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES

73-114. (6902) Oil, gas and mineral leases, release of record of.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

73-115. (6903) Action to compel release—damages, etc.

Venue of Action

Although an action under this section combines three different causes of action, (1) an action for cancellation of the lease, (2) an action for the statutory penalty, and (3) an action for damages; the principal cause of action is for cancellation of the lease, which is a local nontransitory action in rem, and the defendant is not entitled to a change of venue as to any part of the action from the county where the real estate is located to the county of his residence. Beavers v. Rankin, 142 M 570, 385 P 2d 640.

73-116. (6904) Demand for release—when and upon whom, etc.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section 73-208. Validation of conveyances recorded after defective execution.
73-209. Validation of conveyances recorded after defective execution—1965 act.

73-208. Validation of conveyances recorded after defective execution. Any instrument affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after the date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of any instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 63, L. 1963.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged, notice imparted by recording thereof, and providing that duly certified copies thereof may be read in evidence, with like effect as copies of an instrument duly executed, acknowledged and recorded.

Repealing Clause

Section 2 of Ch. 63, Laws 1963 repealed all acts and parts of acts in conflict therewith.

73-209. Validation of conveyances recorded after defective execution—1965 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 58, L. 1965.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged, imparting notice by recording thereof, providing that duly certified copies thereof may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded, containing a repealing clause.

TITLE 74—SALES AND EXCHANGE

Chapter 3. Rights and obligations of seller—delivery and warranty, 74-325.
4. Rights and obligations of buyer—inspection and payment, Repealed—Section 10-102, Chapter 264, Laws of 1963.
5. Exchange, 74-505.
6. Retail installment sales, 74-608.

CHAPTER 2—CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID—FILING—SEIZURE ON DEFAULT

74-201, 74-202. (7591, 7592) Repealed.

Repeal

These sections (Secs. 2340, 2341, Civ. C. 1895), a statute of frauds relating to contracts for sales of personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-204 to 74-207. (7594 to 7597) Repealed.

Repeal

These sections (Secs. 1 to 3, p. 124, L. 1899; Sec. 1, Ch. 52, L. 1911; Sec. 1, Ch. 146, L. 1919; Sec. 1, Ch. 145, L. 1925; Sec. 1, Ch. 112, L. 1935; Secs. 1 to 3, Ch. 70, L. 1943), relating to contracts for the sale of personal property with title retained by the vendor, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 3—RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

Section 74-325. Uniform Commercial Code—applicability.

74-321. (7618) Repealed.

Repeal

This section (Sec. 2382, Civ. C. 1895), relating to warranty of wholesomeness of food sold, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-322. (7619) Warranty on sale of good will.

Breach by Seller

Where buyer of business broke contract by failing to make agreed payments for exclusive business rights in a territory and seller entered the territory after buyer's breach but in violation of the agreement, buyer was entitled to a setoff of the amount of profit which seller took from the restricted territory against seller's action for the full amount of the contract. Leiman-Scott, Inc. v. Holmes, 142 M 58, 381 P 2d 489.

74-325. Uniform Commercial Code—applicability. This chapter shall not apply to sales subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963.

CHAPTER 4—RIGHTS AND OBLIGATIONS OF BUYER—INSPECTION AND PAYMENT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

74-401 to 74-403. (7622 to 7624) Repealed.

Repeal

These sections (Secs. 2400 to 2402, Civ. C. 1895), relating to the rights and obligations of the buyer of goods, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 5—EXCHANGE

Section 74-505. Uniform Commercial Code—applicability.

74-502. (7633) Repealed.

Repeal

This section (Sec. 2431, Civ. C. 1895), making a statute of frauds applicable to contracts for exchange, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-505. Uniform Commercial Code—applicability. The provisions of this chapter shall not apply to exchanges subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963.

CHAPTER 6—RETAIL INSTALLMENT SALES

Section 74-608. Finance charge limitation.

74-608. Finance charge limitation. (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment transaction shall not exceed the following schedule:

(1) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars ($7) per one hundred dollars ($100) per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made—nine dollars ($9) per one hundred dollars ($100) per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars ($11) per one hundred dollars ($100) per year.

(2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars ($300), eleven dollars ($11), per one hundred dollars ($100) per year; (ii) if the principal balance exceeds three hundred dollars ($300), but is less than one thousand dollars ($1,000), nine dollars ($9) per one hundred dollars ($100) per year on that portion over three hundred dollars ($300); (iii) if the

principal balance exceeds one thousand dollars ($1,000), seven dollars ($7) per one hundred dollars ($100) per year on that portion over one thousand dollars ($1,000).

(b) Such finance charge shall be computed on the principal balance as determined under section 7(f) [74-607(f)] of this act on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars ($20) may be charged on any retail installment transaction.

(c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted a subsection (d), for text of which see parent volume.

Interest on Conditional Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to this section, was 16.3% which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, federal court applied the doctrine of abstention and postponed further action until the issue was determined by the supreme court of Montana. B-W Acceptance Corp. v. Torgerson, 234 F Supp 214, 216.

TITLE 75—SCHOOLS

Chapter 2. Revenue-producing facilities at university of Montana, 75-216 to 75-223.
3. Control of state educational institutions, 75-301 to 75-303, 75-310.
4. The Montana university system, 75-401, 75-402.
5. University of Montana—law and forestry schools, 75-506.2 to 75-506.6.
7. Montana state university—Montana wool laboratory—agricultural experiment stations, 75-706, 75-723.
8. Montana grain inspection laboratory, 75-807, 75-811.
13. The public schools—superintendent of public instruction, 75-1301, 75-1315.
16. School trustees, 75-1604, 75-1618, 75-1620, 75-1630, 75-1632, 75-1641 to 75-1644.
17. Budget system, 75-1706, 75-1713.1, 75-1716, 75-1719, 75-1720, 75-1723.
18. School districts, 75-1802, 75-1804, 75-1805, 75-1813, 75-1813.1, 75-1816.
19. Clerks of school districts—school census, 75-1904.
22. School day, month and year—holidays—constitution, pioneer and arbor day, 75-2212.
24. Teachers—powers and duties—election—dismissal, 75-2401.
25. Teachers' examinations and certificates, 75-2501, 75-2516, 75-2518, 75-2521.
27. Teachers' retirement system, 75-2701, 75-2703, 75-2707 to 75-2709.
30. Juvenile disorderly persons—commitment to industrial school, 75-3002.
31. Schoolhouse sites and construction, 75-3109 to 75-3113.
33. School buses—requirements—drivers' qualifications—construction and operation, 75-3308.
34. Transportation of pupils, 75-3403, 75-3413, 75-3414.
35. Free textbooks, 75-3503, 75-3505.
36. Uniform system of free public schools—state support—schedule of contributions, 75-3611 to 75-3612.3, 75-3613 to 75-3621, 75-3624.
37. Finance, 75-3701, 75-3706, 75-3722.
38. Extra taxation for school purposes, 75-3801.
41. High schools—county—junior and district—joint school systems, 75-4120 to 75-4128, 75-4130, 75-4133, 75-4134, 75-4138, 75-4139, 75-4146.
42. High schools—county—junior and district—joint school systems continued—vocational education, 75-4202, 75-4230.
43. Designation of high schools as vocational training centers, 75-4303, 75-4304.
44. Community college districts, 75-4413 to 75-4430.
45. High School Budget Act, 75-4516.1, 75-4518.1, 75-4521, 75-4524, 75-4525.
46. High school districts—public works, 75-4601, 75-4607, 75-4612 to 75-4614.
48. School lunch program, 75-4802.
50. Education classes for mentally and physically handicapped children, 75-5001, 75-5003.
51. Federal aid, 75-5101.
53. Driver education, 75-5301 to 75-5309.
54. School safety patrols, 75-5401 to 75-5405.
55. School districts for nonsectarian child care institutions, 75-5501 to 75-5508.

CHAPTER 1—STATE BOARD OF EDUCATION—COMPOSITION, POWERS AND DUTIES

75-107. (836) Powers and duties.

Delegation of Powers

This section restricts the state board of education from delegating to college officials its power to select teachers or instructors. Brown v. State Board of Education, 142 M 547, 385 P 2d 643.

CHAPTER 2—REVENUE-PRODUCING FACILITIES AT UNIVERSITY OF MONTANA

Section 75-216. Powers of regents enumerated.
75-217. Title to facilities.
75-218. Borrowing by regents.

75-219. State not obligated.
75-220. Units of financing.
75-221. Restriction on use of state funds.
75-222. Previous contracts unimpaired.
75-223. Prior obligations not affected.

75-207 to 75-215. Repealed.

Repeal

These sections (Sec. 1, Ch. 158, L. 1961; Secs. 1 to 8, Ch. 232, L. 1961), relating to student housing facilities at the university of Montana and to the handling of pledged fees therefrom, were repealed by Sec. 9, Ch. 252, Laws 1963.

75-216. Powers of regents enumerated. The regents of the university of Montana may:

(1) Acquire, erect, equip, enlarge and improve, at any unit of the university of Montana, any of the following types of revenue-producing facilities: residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; student union buildings and facilities; and those other facilities specifically authorized by joint resolution of the legislative assembly. When a facility or part of a facility has been designated as a student union, such facility or part of facility shall be used only as a student union.

(2) Rent housing facilities and provide food and other services to the students, officers, guests and employees of the unit at rates that will insure a reasonable net income over operating expenses and will provide for debt service and reserves, and provide for the collection of charges, admissions and fees for the use of other facilities by students and other persons, which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes of Montana, 1947, and may be collected from any or all students. Student building fees established and in effect on January 1, 1965, which are imposed uniformly upon all students, or upon all of a specified class of students in attendance at any unit of the university of Montana, shall not be increased without authorization by law, unless absolutely necessary to the extent to pay only principal or interest due on obligations for which such fees have been or shall be pledged, or to maintain reserves securing the payment of such obligations, in accordance with the indentures, resolutions, contracts or other instruments authorizing the issuance of such obligations; provided that at any unit of the university of Montana where the aggregate amount of student building fees in effect on January 1, 1965, was less than fifty dollars ($50.00) per student per academic year, such fees may be increased or additional student building fees may be established, to an aggregate amount not exceeding fifty dollars ($50.00) per student per academic year and provided further that additional student building fees may be established or existing student building fees may be increased at Montana state university, at Missoula, to an aggregate amount not to exceed ninety dollars ($90.00) per student per academic year. This limitation shall not affect admission or use charges, which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made to nonresident students as defined in section 75-506, R. C. M. 1947.

(3) Hold the net income derived from the operation of such facilities and the charges, admissions and fees so collected and devote the revenues from these sources to debt service and reserves, repairs, replacements and betterments of the facilities or, so far as such revenues have not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging or improvement of additional facilities of the types described in this section.

(4) Exercise full control and complete management of such facilities.

(5) Rent the facilities to other public or private persons, firms and corporations for such uses, at such times, for such periods and at such rates as in the regents' judgment will be consistent with the full use thereof for academic purposes and will add to the revenues available for capital costs and debt service.

History: En. Sec. 1, Ch. 252, L. 1963; amd. Sec. 1, Ch. 246, L. 1965.

Title of Act

An act relating to the acquisition, erection, equipment, enlargement and improvement of housing and other revenue-producing facilities at units of the university of Montana, and the borrowing of funds therefor by the regents by the issuance and sale of negotiable bonds and other securities and the making of purchases on time, payable solely from net income from rents and board, receipts from charges, admissions or fees for the facilities, and gifts, contributions and grants of funds, without obligating the state of Montana or using state funds except as provided, and the provision of security for such borrowing, and the refunding of outstanding obligations; repealing sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947.

Amendment

The 1965 amendment added the material at the end of subsection (1) commencing with "and those other facilities "; added the last two sentences to subsection (2); inserted "and the charges, admissions and fees so collected" after "operation of such facilities" in subsection (3); inserted "the revenues from these sources" after "devote" in subsection (3); added subsection (5); and made numerous changes in phraseology.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-217. Title to facilities. The title to all real estate and improvements acquired and erected under the provisions of this chapter shall be taken and held in the name of the state of Montana, except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid.

History: En. Sec. 2, Ch. 252, L. 1963.

75-218. Borrowing by regents. In carrying out the above powers, the regents may:

(1) Borrow money for any purpose or purposes stated in this chapter, including, if deemed desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for one (1) year thereafter and the creation of a reserve for the payment of bond principal and interest.

(2) Make purchases on a time or installment basis.

(3) Issue bonds, notes and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds, or bonds registered as to ownership of principal only.

(4) Pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes or other securities authorized in this chapter or otherwise obligate:

(a) The net income received from rents, board or both in housing, food service and other facilities.

(b) Receipts from student building, activity, union and other special fees prescribed by the regents for all students.

(c) Other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property, receipts from athletic and other contests, exhibitions and performances and collections of admissions and other charges for the use of facilities, including all use by other persons, firms and corporations for athletic and other contests, exhibitions and performances and for the conduct of their business, educational or governmental functions.

(5) Make payments on loans or purchases from any other available income not obligated for such purposes, including receipts from sales of materials, equipment and fixtures of such facilities, or from sale of the facilities themselves other than land.

(6) Secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana, or by a resolution establishing covenants of the regents with the holders of such bonds, relating to the construction, operation, use and insurance of the facilities, the segregation, expenditure and audit of accounts of the bond proceeds and of the income pledged, the establishment and collection of rents, charges, admissions and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose, and such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds.

(7) Issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations heretofore or hereafter issued by the regents, subject to the following provisions:

(a) Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenues as the bonds refunded, or by a pledge of different or additional revenues received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured

principal or interest for the payment of which revenues on hand are not sufficient, or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three eights of one per cent (⅜ of 1 %) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption from the proceeds of the refunding bonds, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at said redemption date, and any premium required for redemption on such date; and the resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) Revenues or other funds on hand, in excess of amounts pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for

the retirement of such bonds and may be invested and disbursed as provided in subsection (c) hereof, to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) Sell bonds and sell or exchange refunding bonds issued hereunder in such manner and upon such terms as to maturities, interest rates and redemption privileges, and for such price, as the regents shall determine with the approval of the state controller.

History: En. Sec. 3, Ch. 252, L. 1963; amd. Sec. 2, Ch. 246, L. 1965.

Amendment

The 1965 amendment substituted "athletic and other contests, exhibitions and performances" for "athletic contests" after "receipts from" in paragraph (4)(c); added the material at the end of paragraph (4)(c) commencing with "including all use"; inserted the second sentence in paragraph (7)(a); substituted "they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed" for "the refunding bonds are combined with an issue of new bonds for replacements, repairs, betterment or new facilities, and the lien of such new bonds upon the net income and receipts pledged must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the resolution or indenture authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding" at the end of the first sentence of paragraph (7)(b); inserted "from the proceeds of the refunding bonds" after "called for redemption" in the first sentence of paragraph (7)(c); and made minor changes in punctuation and phraseology.

Effective Date

Section 3 of Ch. 246, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

75-219. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. Sec. 4, Ch. 252, L. 1963.

75-220. Units of financing. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the university of Montana may be considered as one; but income received at one (1) unit shall not be used to discharge obligations created for facilities at another unit.

History: En. Sec. 5, Ch. 252, L. 1963.

75-221. Restriction on use of state funds. No state funds except those specified in section 3 [75-218] shall be obligated or used for the purposes of this chapter, unless specifically directed by the legislative assembly.

History: En. Sec. 6, Ch. 252, L. 1963.

75-222. Previous contracts unimpaired. This chapter shall not impair any contract, indenture or agreement executed under previous laws.

History: En. Sec. 7, Ch. 252, L. 1963.

75-223. Prior obligations not affected. No provision of this chapter shall affect or impair:

(1) Any contract or undertaking, or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to the effective date of this chapter;

(2) The issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to the effective date of this chapter.

History: En. Sec. 8, Ch. 252, L. 1963.

Repealing Clause

Section 9 of Ch. 252, Laws 1963 read "Sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947 are repealed."

Effective Date

Section 10 of Ch. 252, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

CHAPTER 3—CONTROL OF STATE EDUCATIONAL INSTITUTIONS

Section 75-301. General control of state institutions.
75-302. Local executive boards—creation, residence and powers.
75-303. Officers.
75-310. Control of expenditures of state institutions.

75-301. (841) **General control of state institutions.** The general control and supervision of the Montana state university, Montana state college, Montana school of mines, western Montana college of education, eastern Montana college of education and northern Montana college, all being units of the university of Montana, and Montana state school for the deaf and blind are vested in the state board of education.

History: New section recommended by code commissioner, 1921; amd. Sec. 4, Ch. 160, L. 1925; amd. Sec. 1, Ch. 12, L. 1943; amd. Sec. 3, Ch. 158, L. 1945; amd. Sec. 78, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "western Montana college of education" for "Montana state normal college" and "eastern Montana college of education" for "eastern Montana state normal school"; and deleted "the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school" which followed "university of Montana."

75-302. (842) **Local executive boards—creation, residence and powers.** There shall be an executive board consisting of three (3) members, for each of said institutions named in the preceding section, all of whom shall be appointed by the governer, by and with the advice and consent of the state board of education. The president of such institution shall not be eligible to appointment as a member of the board. At least two (2) of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 842, R. C. M. 1921; amd. Sec. 4, Ch. 158, L. 1945; amd. Sec. 3, Ch. 242, L. 1953; amd. Sec. 79, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "except-ing the Montana state industrial school" following "the preceding section" in the first sentence; and deleted from the end of the section a proviso reading, "provided this section shall not apply to the executive board for the state vocational school for girls."

75-303. (843) **Officers.** The board shall elect a chairman and shall also appoint a secretary who may or may not be a member of said board.

History: En. Sec. 3, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 843, R. C. M. 1921; amd. Sec. 4, Ch. 242, L. 1953; amd. Sec. 80, Ch. 266, L. 1963; amd. Sec. 32, Ch. 177, L. 1965.

Amendments

The 1963 amendment deleted "excepting the board of the Montana state industrial school herein provided for" following "The board" at the beginning of the section.

The 1965 amendment deleted second, third, and fourth sentences reading, "The treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners."

75-310. (850) **Control of expenditures of state institutions.** The state board of education pursuant to the terms of appropriations of the state legislature or of Congress or of gifts of donors, shall determine the need for all expenditures and control the purposes for which all funds of said institutions shall be spent, subject to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923.

History: En. Sec. 13, Ch. 73, L. 1909; re-en. Sec. 110, Ch. 76, L. 1913; re-en. Sec. 850, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1951; amd. Sec. 24, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "subject to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923" at the end of the section for a sentence reading, "Subject to this control and to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923, the state board of examiners shall let all contracts, issue all bonds for any and all buildings or improvements, and shall audit all claims to be paid from all moneys; but said state board of examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said state board of examiners to be to the best interest of said institution."

75-312. Repealed.

Repeal

This section (Sec. 1, Ch. 25, L. 1957), relating to the budget committee of the state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 4—THE MONTANA UNIVERSITY SYSTEM

Section 75-401. Institutions constituting university system.
75-402. Names of units of university system.

75-401. (852) **Institutions constituting university system.** The university at Missoula, the state university at Bozeman, the college of mineral science and technology at Butte, the college at Dillon, the college at Billings and the college at Havre, and such departments of said institutions as may hereafter be organized, shall constitute the Montana university system. All references in the Revised Codes of Montana 1947 to the "university of Montana" shall mean "the Montana university system."

History: En. Sec. 1, Ch. 92, L. 1913; re-en. Sec. 852, R. C. M. 1921; amd. Sec. 1, Ch. 6, L. 1927; amd. Sec. 1, Ch. 3, L. 1965.

Amendment

The 1965 amendment deleted "state" before "university at Missoula"; substituted "state university" for "college of agriculture and mechanic arts" before "at Bozeman"; substituted "college of mineral science and technology" for "school of mines"; deleted "normal" before "college at Dillon"; substituted "college" for "eastern Montana state normal school" before "at Billings"; substituted "college at Havre" for "northern agricultural and manual training school at Fort Assinniboine"; substituted "Montana university system" for "university of Montana, under the name and style of university of Montana" at the end of the first sentence; and added the second sentence.

75-402. (852.1) **Names of units of university system.** The legal names of the units of the Montana university system shall be as follows:

Unit at Missoula, university of Montana.

Unit at Bozeman, Montana state university.

Unit at Butte, Montana college of mineral science and technology.

Unit at Dillon, western Montana college.

Unit at Billings, eastern Montana college.

Unit at Havre, northern Montana college.

History: En. Sec. 1, Ch. 28, L. 1935; amd. Sec. 2, Ch. 3, L. 1965.

Amendment

The 1965 amendment substituted "Montana university system" for "university of Montana" in the preliminary clause; substituted "university of Montana" for "Montana State University"; substituted "Montana state university" for "Montana State College"; substituted "college of mineral science and technology" for "School of Mines"; deleted "of Education" following "western Montana college" and following "eastern Montana college"; deleted "Fort Assinniboine and" preceding "Havre" in the final line; and made another minor change in phraseology.

Repealing Clauses

Section 3 of Ch. 3, Laws 1965 read "Section 75-402.1 R. C. M. 1947, is repealed."

Section 4 of Ch. 3, Laws 1965 repealed all acts and parts of acts in conflict therewith.

75-402.1. Repealed.

Repeal

This section (Sec. 1, Ch. 30, L. 1949), changing the names of schools at Dillon and Billings, was repealed by Sec. 3, Ch. 3, Laws 1965.

75-403. (853) **Control vested in state board of education, etc.**

Delegation of Powers

Section 75-107 restricts the state board of education from delegating to college officials its power to select teachers and instructors. Brown v. State Board of Education, 142 M 547, 385 P 2d 643.

CHAPTER 5—UNIVERSITY OF MONTANA—LAW AND FORESTRY SCHOOLS

Section 75-506.2. Determination of residence—intent of act.
75-506.3. Definition of terms.
75-506.4. Presumptions as to domicile.
75-506.5. Evidence as to domiciliary intent—changes in status.
75-506.6. Residence of minors—period of residence required to change status.

75-506.2. Determination of residence—intent of act. It is the intent of this act that the units of the university of Montana shall apply uniform rules, as prescribed in this act and not otherwise, in determining whether

students shall be classified as resident or nonresident students for the purpose of charging tuition and additional fees for nonresident students as authorized by section 75-506, R. C. M. 1947.

History: En. Sec. 1, Ch. 164, L. 1965.

Title of Act

An act to establish presumptions and rules to aid in determining the resident status of students attending the university of Montana for tuition and fee purposes and providing an effective date.

75-506.3. Definition of terms. Wherever used in this act:

"Unit" shall mean a unit of the university of Montana.

"Resident student" shall mean a student who has been domiciled in Montana for one year or more immediately preceding registration at any unit of the university of Montana for any term or session for which resident classification is claimed, provided, that attendance at a unit of the university of Montana shall not alone be sufficient to qualify for residence in Montana.

"Domicile" shall mean a person's true, fixed, and permanent home and place of habitation.

"Minor" shall mean a male or female person who has not obtained the age of twenty-one years.

"Qualified person" shall mean a person legally qualified to determine his own domicile.

History: En. Sec. 2, Ch. 164, L. 1965.

75-506.4. Presumptions as to domicile. Unless the contrary appears to the satisfaction of the registering authority of the unit at which a student is registering, it shall be presumed that:

(1) The domicile of a minor is that of his father, or if no father that of his mother, or if there is a guardian of his person that of such guardian; provided that the court appointing such guardian shall certify that the primary purpose of such appointment is not to qualify such minor as a resident of this state; or if one parent has custody of the minor that of such parent.

(2) The domicile of a married woman is normally that of her husband.

(3) A person does not gain or lose resident status by reason of his presence in any state or country while a member of the armed forces of the United States; provided, that a member of the armed forces may obtain resident status for himself, his spouse, or his children, after living in Montana for one year, and complying with the provisions of this act.

(4) The establishment of a new domicile in Montana by a qualified person formerly domiciled in another state has occurred if he is physically present in Montana without a present intention to return to such other state or to acquire a domicile at some other place outside of Montana.

(5) Once established a domicile has not been lost by mere absence unaccompanied by intention to establish a new domicile.

History: En. Sec. 3, Ch. 164, L. 1965.

75-506.5. Evidence as to domiciliary intent—changes in status. To aid the units in deciding whether a student, or parent, or guardian of the person of a student, is domiciled in Montana the following rules shall be applied:

(1) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(2) A qualified person cannot establish a new domicile in Montana if he lacks the intention of so doing.

(3) After a student has registered at a unit his classification for tuition and fee purposes remains unchanged in the absence of satisfactory evidence to the contrary. Such evidence shall be reduced to writing and filed with the registering authority of the unit. Changes in classification established by such evidence, and whether from resident to nonresident or the reverse, shall be in writing, signed by the registering authority of the unit, and shall be given effect at the time of the student's next registration.

History: En. Sec. 4, Ch. 164, L. 1965.

75-506.6. Residence of minors—period of residence required to change status. A minor shall qualify for a change in status only if his parents or legal guardian or person having legal custody shall have completed the requirements for establishing domicile as defined in this act. A minor or adult student who has registered at any unit of the university of Montana shall not qualify for a change in his classification for tuition purposes unless he shall have completed twelve continuous months of residence while not attending a unit of the university of Montana or while serving in the armed forces.

History: En. Sec. 5, Ch. 164, L. 1965.

Effective Date

Section 6 of Ch. 164, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 7—MONTANA STATE UNIVERSITY—MONTANA WOOL LABORATORY—AGRICULTURAL EXPERIMENT STATIONS

Section 75-706. Designation of station as beneficiary—income from sale of products.
75-723. Disposal of moneys received by laboratory.

75-706. (894) **Designation of station as beneficiary—income from sale of products.** Until otherwise provided by law the agricultural experiment station, now established at Bozeman, Gallatin county, state of Montana, shall be the beneficiary of the funds in said act mentioned, and shall use and disburse said funds only for the purposes and in the manner provided in said act. The treasurer of the executive board of the agricultural college and agricultural experiment station, at said city of Bozeman, is hereby authorized to receive and shall be the custodian of said funds, and he shall account for said funds and make reports to the secretary of agriculture, as required by said act of Congress.

Any income received from the sale of agricultural products by the agricultural experiment station at Bozeman or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. Sec. 2, Ch. 64, L. 1907; Sec. 741, Rev. C. 1907; re-en. Sec. 894, R. C. M. 1921; amd. Sec. 235, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

75-723. Disposal of moneys received by laboratory. All moneys collected by the Montana wool laboratory shall be paid to the state treasurer and used by the wool laboratory for the payment of salaries and expenses, including purchase of equipment and supplies, and erection of necessary buildings.

In addition, there is hereby appropriated for the Montana wool laboratory, all federal funds which may by the federal government be provided for the maintenance and operation of said Montana wool laboratory and also all funds which may be received by said laboratory or for its use and benefit for special purposes incident to, and in harmony with the purpose of said laboratory.

History: En. Sec. 10, Ch. 166, L. 1945; amd. Sec. 238, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the former first paragraph, for text of which see parent volume; and, in the present first paragraph, substituted "used by the wool laboratory for" for "by him shall be set aside in a special trust fund, from which fund there is hereby appropriated for the use of said wool laboratory as much thereof as may be necessary for."

CHAPTER 8—MONTANA GRAIN INSPECTION LABORATORY

Section 75-807. Fees chargeable for making tests.
75-811. Disposition of fees and annual report of expenditures.

75-807. (908) **Fees chargeable for making tests.** Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in the earmarked revenue fund to be used in support of the laboratory.

History: En. Sec. 7, Ch. 119, L. 1913; re-en. Sec. 908, R. C. M. 1921; amd. Sec. 236, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a fund in charge of the director of the experiment station" in the second sentence; and deleted a third sentence reading, "Any surplus remaining in this fund at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund."

75-811. (912) **Disposition of fees and annual report of expenditures.** All fees collected by the Montana grain inspection laboratory for the tests conducted shall be deposited in the earmarked revenue fund to be used in the support of the laboratory. A full report of the expenditures of the laboratory with a statement of the source of the income, whether from state appropriations or from fees collected, shall be made a part of the annual report.

History: En. Sec. 9, Ch. 54, L. 1917; re-en. Sec. 912, R. C. M. 1921; amd. Sec. 237, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a fund in charge of the director of the laboratory" in the first sentence; and deleted a former third sentence reading, "Any surplus remaining at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the general fund of the state."

CHAPTER 13—THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-1301. Election, qualification, oath.
75-1315. Apportionment of school interest and income moneys.

75-1301. (931) **Election, qualification, oath.** There shall be chosen by the qualified electors of the state, at the time and place of voting for members of the legislature, a superintendent of public instruction, who shall have attained the age of thirty years at the time of his election, and shall have resided within the state two years next preceding his election, and is the holder of a state certificate of the highest grade, issued in some state, and recognized by the state board of education, or is a graduate of some university, college, or normal school recognized by the state board of education as of equal rank with a unit of the university of Montana. He shall hold his office at the seat of government for the term of four years from the first Monday in January following his election, and until his successor is elected and qualified. Before entering upon his duties, he shall take the oath of a civil officer.

History: En. Sec. 1700, Pol. C. 1895; re-en. Sec. 805, Rev. C. 1907; amd. Sec. 200, Ch. 76, L. 1913; re-en. Sec. 931, R. C. M. 1921; amd. Sec. 33, Ch. 177, L. 1965.

Amendment

The 1965 amendment substituted "a unit of the university of Montana" at the end of the first sentence for "the university of Montana or the state normal school"; deleted from the end of the section a clause reading, "and give bond in the penal sum of three thousand dollars, with not less than two sureties, to be approved by the governor and attorney general"; and corrected a typographical error going back at least to the 1935 Revised Codes.

75-1315. (945) **Apportionment of school interest and income moneys.** He shall, between the first and tenth day of February of each year, apportion the state school interest and income moneys among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to order a warrant drawn on or before the tenth day of January of each year in the amount of the state school interest and income moneys subject to apportionment. The state treasurer shall certify such apportionment to the several county treasurers not later than the first Monday in March; provided, that the several county treasurers have fully complied with section 84-4401, in which case the county treasurers, upon receiving notice from the state treasurer of the amounts due their counties from state school interest and income moneys, may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county, the amount apportioned to that county.

History: En. Sec. 1714, Pol. C. 1895; re-en. Sec. 819, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913; re-en. Sec. 945, R. C. M. 1921; amd. Sec. 226, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "state school interest and income moneys" for "state school fund" in three places; substituted "order a warrant drawn" in the second sentence for "notify the state auditor"; deleted from the end of the second sentence a clause reading, "and the said auditor, immediately upon receipt of such notification, shall issue his warrant on the state treasurer for the said amount"; and made minor changes in phraseology.

CHAPTER 15—COUNTY SUPERINTENDENT OF SCHOOLS

75-1518. (966) Controversies.

Consolidation Election

School elections and procedures therefor are not administrative matters governed by this section and the validity of such elections is determined by the laws of general elections as set forth in section 23-1704. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

75-1522. (970) Abandonment of school districts.

References

Woolsey v. Carney, 141 M 476, 378 P 2d 658.

CHAPTER 16—SCHOOL TRUSTEES

Section 75-1604. Elections in districts of second and third class—nominations.
75-1618. Qualifications of electors.
75-1620. Expenses of election.
75-1630. Transfer of funds.
75-1632. Duties of trustees.
75-1641. Transportation of pupils living near school—charges to parents—preference to children farthest from school.
75-1642. Regular bus routes not used to capacity to be used.
75-1643. Standards for vehicles and drivers.
75-1644. Budgeting and accounting for reimbursable transportation.

75-1604. (988) Elections in districts of second and third class—nominations. In districts of the second and third class, the names of all candidates for membership on the school board must be received and filed by the clerk and posted at each polling place at least twenty days next preceding the election. Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the school board at the ensuing election.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 988, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1965.

Amendment

The 1965 amendment changed the date specified at the end of the first sentence from five to twenty days before the election.

References

State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 485.

75-1605. (989) Conduct of election.

Validity of School Election

The validity of school elections is determined by the laws of general elections as set forth in section 23-1704. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

References

State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 485.

75-1608. (992) Board of trustees to call election—notice of.

References

State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 485.

75-1612. (996) Poll and tally list, certificate of judges, etc.

Withdrawal of Votes

Where the judge's intentional withdrawal of five votes "for consolidation," rather than drawing by lot as required by this section, left the result of the election doubtful, then the election was void. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

75-1618. (1002) **Qualifications of electors.** Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the school district next preceding the election, and who is a registered voter, may vote thereat.

History: En. Sec. 1777, Pol. C. 1895; amd. Sec. 8, p. 138, L. 1897; re-en. Sec. 857, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 1002, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1939; amd. Sec. 1, Ch. 65, L. 1941; amd. Sec. 1, Ch. 143, L. 1965.

Amendment

The 1965 amendment inserted "and who is a registered voter" near the end of the section.

75-1620. (1004) **Expenses of election.** All the expenses necessarily incurred in the matter of holding any and all elections for school trustees, extra levies, bonds, school sites, disposal of property, or any other election provided by law in any school district, high school building district, or county high school, shall be paid out of the general school funds of the district, or in the case of a high school building district, out of the high school general funds; or in the case of county high schools, out of the county high school general fund. In its discretion, the board of trustees may pay judges of any such election at a rate not to exceed one dollar ($1) per hour of service in connection with any such election.

History: Ap. p. Sec. 14, p. 145, L. 1897; re-en. Sec. 866, Rev. C. 1907; amd. Sec. 502, ch. 76, L. 1913; re-en. Sec. 1004, R. C. M. 1921; amd. Sec. 1, Ch. 104, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

Repealing Clause

Section 2 of Ch. 104, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 104, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

75-1630. (1013) **Transfer of funds.** Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

If the board of trustees of the district to be attended shall find that, due to insufficient room and overcrowding the accreditation of the receiving school in the ensuing school year would be adversely affected by acceptance of a transfer pupil from another school district, the board may disapprove the attendance provided it mails written notice of disapproval to the parents or guardian of the pupil within fifteen (15) days after written notification by the county superintendent of the proposed attendance.

In the event that the residence, for determining tuition obligations, of such child is in dispute, then the rules for determining residence as outlined in section 83-303, shall be used by the county superintendent of the county of the child's residence, or in case the dispute is between districts of two counties by the county superintendents of such counties, to finally determine the residence of such child.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred seventy-five dollars ($275); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred and fifty dollars ($250); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be two hundred twenty five dollars ($225) per pupil.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above

tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trustees of the district the pupil wishes to attend. However, nothing in this section shall be so construed as to deny a parent whose children cannot qualify under this section the right to send his children, at his own expense, to a public elementary school of any other district willing to accept them. Such parent must pay to the receiving district, tuition in the amount set forth herein.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; provided, however, that such waiver must apply equally to all pupils, and provided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruc-

tion of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

Whenever a child has been declared by a district court of the state of Montana a dependent and neglected child as defined in section 10-501, or a juvenile delinquent child, as defined in section 10-602, and has been ordered to be placed in a duly licensed child care institution in the state of Montana, which institution is approved by the state department of public welfare, and as a result of such order such child is required to attend a public elementary school in a school district outside of the district in which he resides, the district receiving such pupil shall be entitled to receive tuition on the basis of the schedule established in this act, provided that the geographical relationship of the receiving district to the district of residence shall be of no consequence. All other provisions of this section, excepting solely the geographical relationship of the districts, shall be applicable to the payment of tuition for the education of such child.

History: En. Sec. 507, Ch. 76, L. 1913; amd. Sec. 12, Ch. 196, L. 1919; re-en. Sec. 1013, R. C. M. 1921; amd. Sec. 1, Ch. 109, L. 1929; amd. Sec. 2, Ch. 217, L. 1939; amd. Sec. 1, Ch. 203, L. 1943; amd. Sec. 2, Ch. 207, L. 1951; amd. Sec. 1, Ch. 21, L. 1953; amd. Sec. 1, Ch. 99, L. 1959; amd. Sec. 1, Ch. 228, L. 1961; amd. Sec. 1, Ch. 107, L. 1963; amd. Sec. 1, Ch. 176, L. 1963; amd. Sec. 1, Ch. 251, L. 1963; amd. Sec. 1, Ch. 127, L. 1965.

Amendments

Chapter 107, Laws 1963, added the final paragraph.

Chapter 176, Laws 1963, added the third and fourth sentences to the fifth paragraph after the numbered paragraphs; and inserted the words "provided, however, that such waiver must apply equally to all pupils, and" in the third sentence of the sixth paragraph after the numbered paragraphs.

Chapter 251, Laws 1963, inserted the first paragraph after the numbered paragraphs.

The 1965 amendment adopted the changes made by all three 1963 acts; and increased tuition by $50 in each of the three classes of schools mentioned in the third paragraph after the numbered paragraphs.

Effective Date

Section 2 of Ch. 107, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

75-1632. (1015) Duties of trustees. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1 to 6. * * * [Same as parent volume.]

7. To repair and insure schoolhouses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and buildings, school owned employee housing and part thereof for such time and rental as the board may designate. All rentals shall be paid to the county treasurer for the credit of the school district. Such rentals may be credited to the school housing or rental fund of the district, the general school fund of the district or used to retire outstanding bonds issued by the district. Provided, however, that any expense incurred due to such rentals may be paid out of said rental or housing account, and provided further that any balance in such fund over three thousand dollars ($3,000) at the end of the school year shall be transferred to the general fund.

8 to 10. * * * [Same as parent volume.]

11. When deemed advisable, to employ a physician or registered nurse to make inspection into the sanitary conditions of the school and the

general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above mentioned report as pertains to his child or ward.

12 to 24. * * * [Same as parent volume.]

History: Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130, L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953; amd. Sec. 1, Ch. 228, L. 1955; amd. Sec. 1, Ch. 168, L. 1959; amd. Sec. 1, Ch. 105, L. 1961; amd. Sec. 1, Ch. 76, L. 1963; amd. Sec. 1, Ch. 175, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 76 and once by Ch. 175. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 76, Laws 1963, deleted the words "To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and" which appeared at the beginning of subd. 11.

Chapter 175, Laws of 1963, inserted the words "school owned employee housing" in the first sentence of subd. 7; and added the third and fourth sentences to subd. 7.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-1641. Transportation of pupils living near school—charges to parents—preference to children farthest from school. The board of trustees of any school district or county high school is authorized to provide school bus transportation to pupils who live less than three (3) miles distant from a public school and for this purpose the board may make such charges of parents, guardians or other representatives of pupils as may be necessary to pay the costs of providing such transportation, providing, however, the trustees shall in making such agreements give preference to those children living the farthest from the school to be attended.

History: En. Sec. 1, Ch. 249, L. 1965.

Title of Act

An act to authorize school boards of trustees to provide transportation for pupils living less than three miles from school; providing standards for vehicles and drivers; and providing a fund to account for moneys collected and disbursed under the act.

75-1642. Regular bus routes not used to capacity to be used. The board of trustees may allow such pupils to be transported on such school buses as may be regularly scheduled on state-approved school bus routes and which are not filled to approved capacity by pupils residing three (3) or more miles distant from a public school, or on such other school buses as may be designated for transportation in accordance with this act.

History: En. Sec. 2, Ch. 249, L. 1965.

75-1643. Standards for vehicles and drivers. All school bus vehicles and drivers utilized under the provisions of this act shall meet the minimum standards set forth in section 75-3308, R. C. M. 1947.

History: En. Sec. 3, Ch. 249, L. 1965.

75-1644. Budgeting and accounting for reimbursable transportation. The transportation fund of the school budget shall be utilized for the purpose of budgeting and accounting for all collections of charges and fees authorized by this act. Such moneys shall be accounted for separately from public moneys.

History: En. Sec. 4, Ch. 249, L. 1965.

CHAPTER 17—BUDGET SYSTEM

Section 75-1706. Preparation and adoption of preliminary budget.
75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets.
75-1716. Emergency budgets.
75-1719. Issuance of emergency warrants.
75-1720. Statement of total of emergency warrants—tax levy.
75-1723. Fixing tax levy.

75-1706. (1019.6) **Preparation and adoption of preliminary budget.** At the regular meeting of the board of trustees of each school district on the fourth Monday in June such board must consider, prepare and adopt a preliminary budget for the next ensuing school year. Any taxpayer in the district may appear at such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included therein. Such meeting may be continued from day to day, but not exceeding three (3) days in all; provided, that in first and second class districts such meeting may be continued over a period of not more than five (5) days. When the board has determined the amount necessary to be expended for each item contained in such budget form there shall be entered in column 2 of section I and in column 2 of section II of the budget form the amount proposed to be expended during the ensuing fiscal year for each item contained in such form, and such preliminary budget shall then be signed by a majority of the trustees and the clerk of the district, and the clerk of the district must deliver or transmit such preliminary budget, when so filled in and signed, to the county superintendent of schools on or before the first day of July. If the estimated expenditures set forth in either lines 2 or 4 shall provide for payment of salary or compensation to more than one (1) person, there shall be set forth on a separate sheet but attached to and made a part of such preliminary budget, each position or employment with the salary or compensation to be paid to each person filling the same.

The elementary school budget for any school district in which no elementary school will be operated in the next ensuing school year shall consist of a single budget for the nonoperating fund, which fund shall incorporate all previously existing funds of the school district. Such budget for the nonoperating fund shall include all budgeted items of the district for the ensuing year, including any tuition payments to be made

to the other districts, any transportation obligations, any maintenance of school district property and any other items deemed necessary by the board of trustees of the school district.

History: En. Sec. 6, Ch. 146, L. 1931; amd. Sec. 2, Ch. 63, L. 1941; amd. Sec. 1, Ch. 182, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets. If the total amount of the proposed elementary general fund expenses in the preliminary budget of any district shall exceed the foundation program of such district, the budget board shall, in the manner and subject to the limitations prescribed by section 75-1713, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the entire amount of such excess expense over the foundation program shall be paid solely from levies upon the property in such district and shall not in any manner increase the amounts to be apportioned hereunder from the county common school levy or from the moneys available for state equalization aid; and provided, that, except in the case of the existence of the emergencies specified in section 75-1716, the entire amount of such additional expense over the foundation program plus the foundation program to be included in the budget of any district shall not be greater than the maximum amounts in accordance with the following schedules: provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

Elementary Schools

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be fifty-six hundred thirty-one dollars ($5,631.00).

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be fifty-six hundred thirty-one dollars ($5,631.00) plus one hundred sixty-five dollars and fifty cents ($165.50) per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one teacher, the maximum shall be seventy-one hundred nineteen dollars ($7,119.00) plus sixty-six dollars and twenty-five cents ($66.25) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB over twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two full-time teachers, the maximum shall be twelve thousand seven hundred eighty-six dollars ($12,786.00) plus sixty-six dollars and twenty-five cents ($66.25) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB over fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of four hundred fifty dollars and fifty cents ($450.50) shall be decreased at the rate of thirty-four cents ($0.34) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of four hundred thirty dollars and thirty-six cents ($430.36) shall be decreased at the rate of forty cents ($0.40) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed three hundred forty-nine dollars and eighty cents ($349.80) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

History: En. Sec. 9, Ch. 199, L. 1949; amd. Sec. 1, Ch. 208, L. 1951; amd. Sec. 1, Ch. 267, L. 1963; amd. Sec. 1, Ch. 198, L. 1965.

Amendments

The 1963 amendment substituted "moneys available for state equalization aid" for "state public school equalization fund" immediately before the first proviso; inserted "plus the foundation program" before "to be included in the budget" in the first proviso; substituted "the maximum amounts in accordance with the following schedules" at the end of the first proviso for "thirty per cent (30%) of the foundation program of any school"; and added everything after the first paragraph.

The 1965 amendment increased the amount specified in paragraph (1) from $5,312 to $5,631; deleted from the end of paragraph (1) clauses reading, "if said school is approved as an isolated school; if said school is not approved as an isolated school, then the maximum shall be twenty-six hundred fifty-six dollars ($2,656.00)"; increased the amounts specified in paragraph (2) from $5,312 plus $156 per pupil to $5,631 plus $165.50 per pupil, in paragraph (3) from $6,716 plus $62.50 per pupil to $7,119 plus $66.25 per pupil, and in paragraph (4) from $12,062 plus $62.50 per pupil to $12,786 plus $66.25 per pupil; increased the maximum specified in the first sentence of the second paragraph of subdivision (5) from $425 to $450.50, in the second sentence of that paragraph from $406 to $430.36, and in the third sentence of that paragraph from $330 to $349.80; increased the rate of decrease specified in the first sentence of the second paragraph of subdivision (5) from 32¢ to 34¢ per pupil, and in the second sentence of that paragraph from 38¢ to 40¢ per pupil; and deleted a former last paragraph, added by the 1963 amendment, which read: "On or before January 1 of odd-numbered years, the state superintendent of public instruction shall transmit to the legislative assembly of the state of Montana a revised schedule for elementary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for each classification of elementary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom."

75-1716. (1019.16) Emergency budgets. (1) Whenever the board of trustees of a school district maintaining an elementary school or schools, at any time after December 31st of any school year, shall deem that an

emergency exists by reason of an increase in the enrollment and attendance over that of the immediately preceding school year over and beyond the extent which such increase might reasonably have been anticipated at the time of the adoption of the budget for the then current school year, and that because of such increase in enrollment and attendance the budget approved and adopted for any or all of the regularly budgeted funds of the school district for the then current school year does not provide sufficient funds to properly maintain and support such school or schools during the whole of the then current school year; or shall at any time during a school year deem that an emergency exists because of the destruction of any school property necessary to the maintenance of school, or its impairment by fire, flood, storm, riot, insurrection or other act of God, to such an extent as to render it unfit or prevent its use for the school purposes for which theretofore used; or because of the entering by a court of competent jurisdiction of a judgment for damages against the district, or the enactment of legislation, after the adoption of the final budget, requiring expenditures not contemplated therein, such board of trustees by unanimous vote of all members of the board present at any meeting, the time and place of holding [of] which all of the trustees shall have had reasonable notice, may adopt and enter upon their minutes a resolution, stating the facts constituting the emergency, the estimated amount of money required to meet such emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such current school year.

Whenever such board of trustees shall deem that an emergency exists for any reason other than those reasons specified above, such board may petition the state superintendent of public instruction for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the school district budget or budgets affected by the emergency, the estimated amount of money required to meet such emergency for each affected budget, the anticipated source or sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction. Such petition shall be signed by all of the members of the board of trustees.

The state superintendent of public instruction shall have the power to approve or disapprove such petition. If such petition be approved, the board of trustees may proceed to adopt a resolution of emergency, and may subsequently take all other steps prescribed for meeting an emergency situation due to any of the causes specified above. Approval of such petition by the superintendent of public instruction shall merely authorize the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve such board of trustees of the necessity of complying with the requirements for proceeding according to the provisions of this section and all other laws pertaining to emergency budgets. Approval of such petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency.

(2) and (3). * * * [Same as parent volume.]

(4) In the event of any other emergency described in this section, the preliminary emergency budget shall state the amount to be appropriated therein as definitely as possible the details of the proposed expenditures of the appropriation.

(5) The board of trustees may adopt an emergency budget for any or all of the budgeted funds of the school district, for which fund or funds a regular budget has been approved and adopted for the current year in accordance with the provisions of section 75-1712.

(6) Whenever the board of trustees shall prepare an emergency budget for the transportation fund, such emergency budget shall be so itemized as to show the amount appropriated therein separately for bus transportation and for payments to parents or guardians in lieu of bus transportation. The board of trustees shall attach to such emergency transportation budget a copy of each transportation contract connected with the emergency, such contracts to be prepared and executed in accordance with the provisions of section 75-3405.

(7) Whenever the board of trustees shall prepare an emergency budget for the general fund or the transportation fund, or both, due to increased enrollment, such board of trustees may make application to the state superintendent of public instruction for increased payment from the state public school equalization fund for the foundation program, or for state transportation reimbursement, or both. The state superintendent of public instruction shall prepare and publish rules and regulations for such application. The state superintendent of public instruction shall consider all applications for increased state aid made in accordance with the provisions of this act, and shall determine the amount of increase, if any, which shall be made in the payment of funds from the state public school equalization fund for the foundation program, or for state transportation reimbursement, or both, on account of any emergency budget due to increased enrollment. The superintendent of public instruction shall notify the board of trustees of the approval or disapproval of any application for increase in payment of state funds, and in the event of approval the budget or budgets to which such increased payment shall be applied, and the amount or amounts thereof. The board of trustees shall attach a copy of such notice of approval or disapproval to the preliminary emergency budget.

(8) Three (3) copies of the emergency budget shall be furnished the county superintendent of schools and such county superintendent must lay one (1) copy thereof before the board of county commissioners, which constitutes the board of school budget supervisors for the county, at the next regular meeting of such board. Such board shall have the power to make such change in such budget, if any, as it may deem proper and necessary, and shall then approve such budget, either as adopted by the board of school trustees, or as changed by the board of county commissioners.

History: En. Sec. 16, Ch. 146, L. 1931; amd. Sec. 1, Ch. 193, L. 1943; amd. Sec. 1, Ch. 134, L. 1945; amd. Sec. 1, Ch. 124, L. 1959; amd. Sec. 1, Ch. 147, L. 1965.

Amendment

The 1965 amendment inserted "for any or all of the regularly budgeted funds of the school district" after "the budget ap-

proved and adopted" in the first clause of the first paragraph of subsection (1); made another minor change in the first paragraph of subsection (1); added the second and third paragraphs to subsection (1); divided former subsection (4) into present subsections (4) and (8); and inserted new subsections (5), (6), and (7).

75-1719. Issuance of emergency warrants. After the approval of such emergency budget, if the budget is to provide additional funds for the maintenance and support of the school or schools, whenever the amount appropriated for any item in the annual budget for such current school year has been fully used and such appropriation is exhausted, expenditures made thereafter shall be made by emergency warrants against the amount appropriated in the emergency budget, which emergency warrants shall be issued in the same manner and form and subject to the same conditions and provisions as set out in section 75-1726, except that on each thereof shall be distinctly endorsed "ELEMENTARY EMERGENCY WARRANT SCHOOL DISTRICT NO.————————." After deducting from the amount of money standing to the credit of the fund of the school district for which the emergency budget was adopted the amount required to meet and take care of all unexpended appropriations in the annual budget for that fund for the current school year and after deducting the amount required for the reserve, if any, provided in such budget for the following school year, if any balance remains in that fund the same shall be used to pay such emergency warrants issued against that fund, in the order in which the same are presented for payment.

History: En. Sec. 4, Ch. 134, L. 1945; amd. Sec. 2, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "the fund of the school district for which the emergency budget was adopted" for "the general fund of the school district" in the final sentence; inserted "for that fund" after "all unexpended appropriations in the annual budget" in the final sentence; substituted "after deducting the amount required for the reserve, if any" for "the reserve" in the final sentence; inserted "in that fund" after "if any balance remains" in the final sentence; and inserted "issued against that fund" after "used to pay such emergency warrants" in the final sentence.

75-1720. Statement of total of emergency warrants—tax levy. The county treasurer shall, not later than the first Monday in August of the following school year, make out a statement for such school district showing the total amount of such emergency warrants issued then outstanding against any fund or funds, and the amount of money, if any, in the said fund or funds of the school district applicable to the payment thereof, and the amount or amounts for the payment of which a special tax levy or tax levies should be made, and deliver the same to the board of county commissioners. For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall, on the second Monday in August, make and fix a levy against the taxable property in the school district which will raise sufficient funds to pay such outstanding emergency warrants, with interest thereon, and the county treasurer shall, when collected, place the proceeds of each levy in a special fund and use the same to pay such outstanding emergency warrants with interest thereon as may be obligations against such fund. If after all such emergency warrants

have been paid any amount remains in any such special fund it shall be, by such county treasurer, transferred to the comparable regular fund of the school district.

History: En. Sec. 5, Ch. 134, L. 1945; amd. Sec. 3, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "against any fund or funds" for "and unpaid" after "emergency warrants issued then outstanding" in the first sentence; substituted "the said fund or funds" for "the general fund" before "of the school district applicable to the payment thereof" in the first sentence; inserted "or amounts" after "amount" and "or tax levies" after "special tax levy" in the latter part of the first sentence; substituted "For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall" at the beginning of the second sentence for "Such board shall"; substituted "the proceeds of each levy" in the second sentence for "the same"; added "as may be obligations against such fund" at the end of the second sentence; inserted "any" before "such special fund" in the third sentence; and substituted "the comparable regular fund" in the third sentence for "the general fund."

75-1723. (1019.19) **Fixing tax levy.** The county superintendent of schools, as clerk of the school budget board, shall, when the board of county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed the maximum budgets set forth in section 75-1713.1, R.C.M. 1947.

To finance the approved nonoperating budget of any school district in which no elementary school will be operated, the county commissioners shall fix and levy a tax for such school district in such number of mills as will produce the amount shown by the approved budget to be raised by tax levy, after deducting from the total amount to be financed the following:

(1) any net nonoperating fund cash balance; provided, that whenever a nonoperating district did not have a nonoperating fund the preceding year, the net cash balances in all of the regular funds of the district shall be combined to form a single balance which shall be called the nonoperating fund cash balance; provided, further, that any district which operated at least one (1) school in the year immediately preceding the budget year may retain separately any cash balance previously designated as its general fund cash reserve, if in the judgment of the trustees of such district the retention of such general fund cash reserve is essential to the operation of a school anticipated for the year following the budget year,

and any such retained cash reserve shall not be deducted from the total amount required for the nonoperating budget;

(2) the amount of any transportation reimbursement anticipated from the county;

(3) the amount of any transportation reimbursement anticipated from the state public school equalization fund; and

(4) any miscellaneous revenues available to the district. The remainder of the nonoperating budget amount, after deduction of the above revenues, shall be financed by a tax levied on the taxable valuation of the property of the school district.

History: En. Sec. 19, Ch. 146, L. 1931; amd. Sec. 10, Ch. 199, L. 1949; amd. Sec. 2, Ch. 208, L. 1951; amd. Sec. 1, Ch. 247, L. 1953; amd. Sec. 1, Ch. 247, L. 1961; amd. Sec. 2, Ch. 182, L. 1963; amd. Sec. 2, Ch. 267, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 182 and once by Ch. 267. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 182, Laws 1963, added the third paragraph, including the clauses numbered (1) to (4).

Chapter 267, Laws 1963, deleted from the end of the first paragraph clauses reading, "and it shall be the duty of the county commissioners of each county in the state to fix and levy a tax of five (5) mills on the dollar of the taxable value of all school districts within the county, provided that if a levy of less than five (5) mills will be sufficient to meet the approved budget of any school district, then such lesser levy shall be made, but no school district levying less than five (5) mills shall receive any apportionment from the state public school equalization fund"; and substituted "the maximum budgets set forth in section 75-1713.1, R. C. M. 1947" at the end of the second paragraph for "the rate of levy required to produce an amount equal to the foundation program and the additions thereto, within the limitations of thirty per cent (30%), hereinbefore specified, and provided, further, that such last mentioned additional school district tax shall not, in any event, exceed fifteen (15) mills unless the excess above said fifteen (15) mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than fifteen (15) mills is required to reach the thirty per cent (30%) limit above the foundation program, such increase above the fifteen (15) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the thirty per cent (30%) limit above the foundation program."

CHAPTER 18—SCHOOL DISTRICTS

Section 75-1802. Classifications of districts—number of trustees.
75-1804. Limitation in creating or changing boundaries of districts.
75-1805. Creation of new districts out of other districts—change of boundaries.
75-1813. Consolidated districts—procedure in event of consolidation—annexation—bonded debts.
75-1813.1. Consolidated districts in two or more counties.
75-1816. Budget and tax levy in joint districts.

75-1802. (1021) Classifications of districts—number of trustees. All districts having a population of eight thousand (8000) or more shall be districts of the first class. All districts having a population of one thousand (1000) or more, and less than eight thousand (8000) shall be districts of the second class, and all districts having a population of less than one thousand (1000) shall be districts of the third class. In districts of the first class the number of trustees shall be seven (7); in districts of the

second class the number of trustees shall be five (5), and in districts of the third class the number of trustees shall be three (3).

Whenever the population of any school district shall increase beyond or decrease below the number required as specified above for a certain class of school district, the county superintendent of schools shall declare such school district to be changed to the proper class. The county superintendent may compute the population by multiplying by three the number of school census children in the district. No school district shall be changed in classification more than once in any five (5) year period. The county superintendent of schools shall take the necessary steps to provide that at the next school election to elect the proper number of school trustees as designated above and to fill all vacancies due to any change of classification. Provided however that the provisions of this act shall not affect the terms of trustees heretofore elected.

History: En. Sec. 401, Ch. 76, L. 1913; re-en. Sec. 1021, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1943; amd. Sec. 1, Ch. 203, L. 1963.

Amendment

The 1963 amendment deleted the words "as determined by the federal census next preceding" which followed "class of school district" in the first sentence of the second paragraph; and inserted the second and third sentences of the second paragraph.

75-1804. (1023) Limitation in creating or changing boundaries of districts. No school district shall be created nor boundaries changed between March 1st and July 1st of any calendar year; provided, that this limitation shall not apply to boundary changes made under section 75-1813.

History: En. Sec. 1760, Pol. C. 1895; re-en. Sec. 849, Rev. C. 1907; re-en. Sec. 403, Ch. 76, L. 1913; amd. Sec. 1, Ch. 69, L. 1917; re-en. Sec. 1023, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1923; amd. Sec. 1, Ch. 37, L. 1933; amd. Sec. 1, Ch. 56, L. 1961; amd. Sec. 1, Ch. 140, L. 1963.

Amendment

The 1963 amendment added the proviso.

Repealing Clause

Section 2 of Ch. 140, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 140, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

References

State ex rel. Blackwood v. Lutes, 142 M 29, 381 P 2d 479.

75-1805. (1024) Creation of new districts out of other districts—change of boundaries. (1) A new school district may be created out of portions of one (1) or more existing school districts where the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property remaining in each district from which territory is taken is not reduced below seventy-five thousand dollars ($75,000.00) and where the number of census children between the ages of six (6) and sixteen (16) years is not reduced below fifteen (15). For the purpose of organizing a new school district out of one (1) or more existing districts, a petition in writing shall be made to the county superintendent of schools, signed by parents or guardians of at least ten (10) census children between the ages of six (6) and sixteen (16) years, residing within the boundaries of the proposed new district, and residing at a greater distance than three (3) miles from any schoolhouse owned by any one of such school districts in which a school is maintained. The

method for measurement of the distance between the residence and the schoolhouse shall be as provided in section 75-3411, R. C. M. 1947, in so far as the same may apply. The petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing therein at the date of the presenting of said petition. The petition shall also show the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of the property within the proposed new district which must not be less than seventy-five thousand dollars ($75,000.00) as shown by the last completed assessment roll. Provided, however, that said provision as to the minimum remaining taxable valuation of each district from which territory is taken shall not apply in a case where such district has at least fifty thousand (50,000) acres of nontaxable Indian land remaining within its borders and provided, further, that said provision as to the minimum taxable valuation of such proposed new district shall not apply where such proposed district contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(2) to (4). * * * [Same as parent volume.]

(5) A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent of schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous, provided, however, that no territory within three (3) miles of an established school in such district shall be so transferred. Under this subsection, the three (3) miles shall be measured between a residence and a schoolhouse as provided in section 75-3411, R. C. M. 1947, in so far as the same may apply; and provided further that the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property in the district from which territory is taken shall not be reduced to less than seventy-five thousand dollars ($75,000.00); provided, however, that this latter provision shall not apply in cases where the remaining taxable valuation of the district from which the territory is taken contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(6) to (8). * * * [Same as parent volume.]

History: Ap. p. Sec. 1751; Pol. C. 1895; re-en. Sec. 840, Rev. C. 1907; amd. Sec. 1, Ch. 82, L. 1911; amd. Sec. 404, Ch. 76, L. 1913; amd. Sec. 8, Ch. 196, L. 1919; re-en. Sec. 1024, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1927; amd. Sec. 1, Ch. 175, L. 1933; amd. Sec. 1, Ch. 61, L. 1943; amd. Sec. 1, Ch. 232, L. 1955; amd. Sec. 1, Ch. 163, L. 1957; amd. Sec. 1, Ch. 171, L. 1965.

Amendment

The 1965 amendment inserted the third sentence in subsection (1); divided subsection (5) into two sentences; and inserted that portion of the second sentence in subsection (5) preceding the provisos therein.

75-1813. (1034) **Consolidated districts—procedure in event of consolidation—annexation—bonded debts.** Any two or more school districts lying in one county may be consolidated, either by the formation of a

district by consolidation, or by the annexation of one or more districts to an existing district, as hereinafter provided.

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the county superintendent of schools having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause notice of election to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and published in a newspaper published in the county and having general circulation in the school districts, giving the time and place or places specified in each notice to vote on the question of consolidation.

Consolidation of any two (2) or more school districts lying in one county may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendent of schools, and shall in each such district seeking consolidation be signed by not fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendent shall within not less than twenty (20), nor more than thirty (30) days, cause notice to be given as provided in the next preceding paragraph.

The votes at such election shall be by ballot, which shall read "For consolidation" or "Against consolidation." The judge or judges at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendent of the county in which the district lies.

If the majority of the votes cast in each district holding such election be for consolidation, it carries, and the superintendent, within ten (10) days thereafter, shall make a proper order to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the number of such district, and the county superintendent shall appoint trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors.

At the regular election succeeding there shall be elected by the regularly qualified electors the number of trustees required to replace those whose terms are expiring. The election of trustees and terms shall be the same as for other districts under the general school laws.

When, in the interest of reducing cost of operation or improving the school service for pupils, a board of trustees of a third class district seeking to annex its territory to a third class district or districts maintaining a high school, a second class district or districts, or a first class district or districts or any combination thereof; a board of trustees of a third class district maintaining a high school seeking to annex its territory to a second class district or districts or a first class district or districts or any combination thereof; or the board of trustees of a second class district seeking to annex its territory to a first class district or

districts, shall by majority vote of its members or at the request of twenty per cent (20%) of the qualified electors of the districts indicated by a petition, ask the county superintendent of schools to annex the territory and property of such district to any district or districts as herein provided. As the board resolution or petition requests, the county superintendent shall, upon an approving vote of the trustees of the district or districts with which the annexation is sought, authorize an election in the petitioning district on such annexation within not less than twenty (20) nor more than thirty (30) days. Notice of such election shall be given in the same manner and the same general plan for balloting shall be utilized on the question of district annexation by the electors of the petitioning district that is authorized herein for district consolidation.

The ballot shall in this case be "For annexation" and "Against annexation." Should the action of the boards of trustees approving the plan of annexation be approved by majority vote of electors of the district seeking annexation then the annexation sought shall be effected by order of the county superintendent of schools within ten (10) days after such election. In the event of a disapproving vote by majority of votes cast the proposed annexation shall fail.

In case of annexation of any district to any existing district or districts, as herein provided, the proper officers of the annexed districts, within ten (10) days from the receipt of a copy of the annexation order, shall turn over to the proper officers of the district or districts to which it is annexed, all records, funds, and effects of such annexed district. When a district is proportionately annexed, as provided herein, section 75-1808, Revised Codes of Montana, 1947, controls. In case of the formation of a district by consolidation the proper officers of the discontinued district or districts in like manner, within ten (10) days after the organization of the district by consolidation, shall turn over the records, funds, and effects of such old district to the proper officers of the district created by consolidation.

In case of creation of a district by annexation, the title to schoolhouses and sites of the petitioning district shall vest in the receiving district or districts in which the schoolhouses and sites are located. The officers of the receiving district or districts shall continue to hold office until the end of the terms for which they were duly elected and their successors shall be regularly elected as provided by law.

School districts created by consolidation or annexation shall be governed by the general school laws of the state.

Bonded indebtedness of any district resulting from merger by consolidation or annexation shall remain the indebtedness and obligation of the district which originally incurred such bonded indebtedness and be paid by levies imposed upon property therein.

History: En. Sec. 407, Ch. 76, L. 1913; re-en. Sec. 1034, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1943; amd. Sec. 1, Ch. 32, L. 1951; amd. Sec. 1, Ch. 23, L. 1953; amd. Sec. 1, Ch. 205, L. 1965. Cal. Pol. C. Sec. 1577.

Amendment

The 1965 amendment deleted subsection designations; substituted "formation of a district by consolidation" for "formation of a new district" in the first paragraph; substituted "notice of election" for "a

ten (10) days' posted notice" near the end of the first sentence of the second paragraph; substituted "published in a newspaper published in the county and having general circulation in the school districts" for "in one or more newspapers of the district or county, if there be such" in the second sentence of the second paragraph; substituted "cause notice to be given as provided in the next preceding paragraph" at the end of the third paragraph for "cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district, and in one or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation"; substituted "The judge or judges" for "The presiding officer" at the beginning of the second sentence of the fourth paragraph; deleted "name and" before "number of such district" in the second sentence of the fifth paragraph; substituted "appoint trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors" at the end of the fifth paragraph for "appoint three (3) trustees to serve until the first Saturday in April succeeding"; substituted "the number of trustees required to replace those whose terms are expiring" at the end of the first sentence of the sixth paragraph for "three (3) trustees, one of whom shall serve for one (1) year, one for two (2) years, and one for three (3) years"; inserted "seeking to annex its territory to a third class district or districts maintaining a high school, a second class district or districts, or a first class district or districts or any combination thereof; or the board of trustees of a second class district seeking to annex its territory to a first class district or districts" in the first sentence of the seventh paragraph; substituted "such district to any district or districts as herein provided" at the end of the first sentence of the seventh paragraph for "such third class district to any second or first class district in its entirety, or proportionately to any number of first or second class districts"; inserted "or districts" after "district" in the second sentence of the seventh paragraph and twice in the first sentence of the ninth paragraph; inserted "in the petitioning district" after "authorize an election" near the end of the second sentence of the seventh paragraph; deleted "or districts as the case may be" after "petitioning district" in the third sentence of the seventh paragraph; substituted "district seeking annexation then the anexation sought shall be effected by order of the county superintendent" in the second sentence of the eighth paragraph for "district or districts seeking election on the issue then the consolidation sought shall be effected by the county superintendent"; deleted "by either of such voting districts" after "votes cast" in the third sentence of the eighth paragraph; deleted "or districts" after "annexation of any district" in the first sentence of the ninth paragraph; inserted the second sentence in the ninth paragraph; substituted "formation of a district by consolidation" and "organization of the district by consolidation" in the third sentence of the ninth paragraph for "formation of a new district" and "organization of the new district"; inserted "district or" after "discontinued" in the third sentence of the ninth paragraph; substituted "district created by consolidation" for "new districts" at the end of the ninth paragraph; substituted "creation of a district" for "consolidation of districts" near the beginning of the tenth paragraph; substituted "petitioning district" for "separate districts" in the first sentence of the tenth paragraph; substituted "the receiving district or districts in which the school houses and sites are located" at the end of the first sentence of the tenth paragraph for "the new consolidated district"; substituted "the receiving district or districts" for "the first or second class district involved" in the second sentence of the tenth paragraph; substituted "School districts created by consolidation or annexation" for "Consolidated school districts" at the beginning of the eleventh paragraph; substituted "resulting from merger" for "merged" near the beginning of the final paragraph; and made several other minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 205, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Preparation of Ballots

Where the ballots for a consolidation election were prepared to read only "For" or "Against" rather than "For consolidation" or "Against consolidation" as required by subsection 2 of this section, and testimony showed that in at least one instance a voter was confused by this reading and mismarked her vote, the election was on its face null and void. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

75-1813.1. **Consolidated districts in two or more counties.** (1) Any two or more school districts that are adjacent and contiguous lying in two (2) or more counties may be consolidated, either by the formation of a new district or by the annexation of one or more districts to an existing district, as hereinafter provided.

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the superintendents of each county affected having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and in one (1) or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

Consolidation of any two (2) or more school districts that are adjacent and contiguous lying in two (2) or more counties may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendents of schools of each county affected, and shall in each such district seeking consolidation be signed by no fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendents shall within not less than twenty (20) nor more than thirty (30) days, cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district, and in one (1) or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

(2) The votes at such election shall be by ballot, which shall read "For consolidation" or "Against consolidation." The presiding officer at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendents of the counties affected in which the district lies.

(3) If the majority of the votes cast in each district holding such election be for consolidation, it carries, and the superintendents of each county affected, within ten (10) days thereafter, shall in concurrent action make proper orders to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder of each county affected and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the name and number of such district, and county superintendents of the counties affected in concurrent action shall appoint three (3) trustees to serve until the first Saturday in April succeeding.

(4) At the regular election succeeding there shall be elected by the regularly qualified electors three (3) trustees, one (1) of whom shall

serve for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. The election of trustees and terms shall be the same as for other districts under the general school laws.

(5) Consolidated school districts shall be governed by the general school laws of the state.

(6) Bonded indebtedness of any district merged by consolidation shall remain the indebtedness and obligation of the district which originally incurred such bonded indebtedness and be paid by levies imposed upon property therein.

History: En. Sec. 1, Ch. 141, L. 1965.

Title of Act

An act providing for formation and control of joint school districts.

Effective Date

Section 2 of Ch. 141, Laws 1965 read "This act is effective April 1, 1965."

75-1816. (1036.1) Budget and tax levy in joint districts. The board of school trustees of each joint school district shall consider, prepare and adopt a preliminary budget according to the provisions of section 75-1706, provided that a copy of such budget shall be transmitted to the county superintendent of schools of each county in which any part of such joint school district is situated. The county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint school district for each fund for which a levy is to be made. After ascertaining and determining the number of mills which should be levied for each said fund, in the manner herein provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

The number of mills to be levied on all of the property of such joint district for each tax-supported fund shall be determined in accordance with the general laws pertaining to tax levies for school districts, provided that the following exceptions to general financing procedures shall be made:

(a) In the general fund budget and solely for the purpose of determining the amounts of county equalization aid to be allocated to the joint district for its foundation program, the total foundation program amount of the joint district shall be considered as consisting of as many separate foundation programs as there are counties in which any portion of the joint district is situated. The amount of each such separate foundation program shall bear to the total amount of the foundation program the same relationship that the number of ANB pupils in the joint district residing in each such county bears to the total ANB of the joint district. To the requirements of each such separate foundation program shall be applied the estimated state interest and income payment based on the number of census pupils in such portion. The amount of county equaliza-

tion aid to be allocated to such separate foundation program shall then be determined in accordance with the provisions of section 75-3618. Following the determination of the amount of county equalization aid from each county in which any portion of the joint district is situated, the total remaining requirements of the general fund budget shall be financed in accordance with the general laws, provided that, to receive state equalization aid, such joint district must apply to its foundation program all district revenue from the state permanent school fund.

(b) In the transportation fund budget and solely for the purpose of apportioning among the counties wherein any portion of the joint district is situated the amount of county reimbursement for elementary transportation to be allocated to the joint district, the obligation for the total amount of such county reimbursement shall be distributed among such counties in the same proportion as the ANB of the joint district is distributed by residence in each such county.

History: En. Sec. 1, Ch. 105, L. 1925; amd. Sec. 2, Ch. 182, L. 1951; amd. Sec. 3, Ch. 151, L. 1961; amd. Sec. 3, Ch. 267, L. 1963.

Amendment

The 1963 amendment deleted from the end of the third sentence of paragraph (a) the words "plus the estimated revenue to be derived from a levy of five mills on the dollar of the taxable value of the property in such portion"; and deleted from the end of paragraph (a) the words "and a district-wide five-mill levy."

75-1832. (1039.8) **Failure to properly keep books—penalty, etc.**

Clerk of School Board

The clerk of a school district board of trustees does not perform any of the sovereign functions of government; consequently, he is an employee rather than a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 486.

CHAPTER 19—CLERKS OF SCHOOL DISTRICTS—SCHOOL CENSUS

Section 75-1904. Checking census reports—maintaining files—census of handicapped.

75-1901. (1049) **Clerk—duties of.**

Nature of Position

The clerk of a school district board of trustees does not perform any of the sovereign functions of government; consequently, he is an employee rather than a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 486.

75-1904. (1051.1) **Checking census reports—maintaining files—census of handicapped.** It shall be the duty of the county superintendent of schools upon receipt of the report as provided in section 75-1903 to carefully examine the same and check it for errors or duplications with other census reports filed by other clerks of school districts of his county. For the purposes of assisting him in checking duplication in such reports, he shall make an alphabetical card index, classified by families, showing the names of all children on the school census, which index shall be kept current according to the census reports turned in to him each year. If the name of the same person be found upon more than one report or if the report contains names which are fictitious or names which properly belong in some other school district, he shall strike out such fictitious names and

all duplicate names from all lists except that of the district in which such person was residing in good faith on the first day of October. If the county superintendent should find upon any census list the names of any persons who he believes were not residents in good faith in such district as aforesaid or which he believes are fictitious, he shall notify the clerk of the particular school district and if said clerk shall not establish the correctness of the list within fifteen (15) days after such notification, such names shall be stricken from the list. At the time of taking the annual census the clerk, with the co-operation of the public health nurse or school nurse or public health medical officer, shall use reasonable diligence to ascertain the names of all handicapped children in the district and such information concerning the same as is required by the state superintendent of public instruction, except that such a survey of handicapped children need not be conducted annually but shall be made at least once every four years at the time of the annual school census as directed by the state superintendent of public instruction in co-operation with the state board of health.

History: En. Sec. 2, Ch. 118, L. 1927; amd. Sec. 1, Ch. 140, L. 1955; amd. Sec. 1, Ch. 213, L. 1965.

Amendment

The 1965 amendment inserted "with the co-operation of the public health nurse or school nurse or public health medical officer" near the beginning of the final sentence; and added "except that such a survey of handicapped children need not be conducted annually but shall be made at least once every four years at the time of the annual school census as directed by the state superintendent of public instruction in co-operation with the state board of health" at the end of the section.

CHAPTER 20—GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS—CORRESPONDENCE SCHOOLS—VISUAL TEACHING

75-2002. (1054) Courses of instruction.

Cross-Reference

Driver education courses, secs. 75-5301 to 75-5309.

CHAPTER 22—SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—CONSTITUTION, PIONEER AND ARBOR DAY

Section 75-2212. Arbor day—date of.

75-2212. (1068) Arbor day—date of.

The last Friday of April in each year shall be known throughout the state of Montana as Arbor day.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1990, Pol. C. 1895; amd. Sec. 1, Ch. 11, L. 1907; re-en. Sec. 1022, Rev. C. 1907; amd. Sec. 1, Ch. 83, L. 1909; re-en. Sec. 1401, Ch. 76, L. 1913; re-en. Sec. 1068, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1963.

Amendment

The 1963 amendment substituted "last Friday of April" for "second Tuesday of May."

Effective Date

Section 2 of Ch. 61, Laws 1963 provided that the act should be effective immediately upon its passage and approval. Approved February 21, 1963.

CHAPTER 24—TEACHERS—POWERS AND DUTIES—ELECTION —DISMISSAL

Section 75-2401. Re-election of teachers—when automatic—acceptance.

75-2401. (1075) **Re-election of teachers—when automatic—acceptance.** After the election of any teacher or principal for the fourth consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

The board of trustees of any school district or county high school may terminate the services for the ensuing year of any teacher who has attained, or will attain the age of sixty-five (65) years before the following first day of September, by giving notice in writing before the first day of April that his services will not be required for the ensuing year, provided, however, that a board of trustees may in its discretion continue to employ a teacher until the age of seventy (70) years has been attained.

History: En. Sec. 801, Ch. 76, L. 1913; re-en. Sec. 1075, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1927; amd. Sec. 1, Ch. 166, L. 1949; amd. Sec. 1, Ch. 26, L. 1957; amd. Sec. 1, Ch. 144, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

CHAPTER 25—TEACHERS' EXAMINATIONS AND CERTIFICATES

Section 75-2501. Examinations and certificates—certificates of qualification required of teachers.
75-2516. Classes of certificates for teaching.
75-2518. Outstanding certificates for teaching.
75-2521. Fees for certificates for teaching.

75-2501. (1088) **Examinations and certificates—certificates of qualification required of teachers.** 1. Except as provided in subsection 2 of this section, no certificate to teach in the public schools of Montana shall

be granted to any person who is not a citizen of the United States. This requirement shall not apply to persons who are not citizens of the United States but who are approved annually by the state superintendent of public instruction for employment in the public schools, the public junior colleges and units of the university of Montana as exchange teachers from foreign countries, or for special instruction, study, or research.

2. The superintendent of public instruction, in accordance with section 75-2516 and upon request of a board of trustees, may issue a Class 5 provisional certificate to a person who is not a citizen.

3. * * * [Same as 2 in parent volume.]

4. * * * [Same as 3 in parent volume.]

5. * * * [Same as 4 in parent volume.]

History: Ap. p. Sec. 900, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919; re-en. Sec. 1088, R. C. M. 1921; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 1, Ch. 147, L. 1931; amd. Sec. 1, Ch. 90, L. 1947; amd. Sec. 1, Ch. 83, L. 1961; amd. Sec. 1, Ch. 90, L. 1961; amd. Sec. 1, Ch. 242, L. 1965.

Amendment

The 1965 amendment inserted "Except as provided in subsection 2 of this section" at the beginning of subsection 1; substituted "state superintendent of public instruction" for "state board of education" in the second sentence of subsection 1; made changes in arrangement and phraseology in the second sentence of subsection 1; deleted from subsection 1 a final sentence reading, "During no school or university year may the number of persons so approved for employment by the state board of education exceed a total of one hundred (100) persons for both the public schools and the units of the university of Montana"; inserted a new subsection 2; and appropriately renumbered the succeeding subsections.

75-2516. Classes of certificates for teaching. The state superintendent of public instruction may issue the following classes of certificates for teaching in accordance with the rules and regulations approved and adopted by the state board of education:

Class 1 to Class 4. * * * [Same as parent volume.]

Class 5. Provisional certificate. The provisional certificate may be issued to applicants who provide evidence satisfactory to the state board of education of intent to qualify themselves in the future for the Class 1 professional certificate or the Class 2 standard certificate, and who have completed the following minimum of academic and/or professional training at a unit of the university of Montana or equivalent institution as provided by section 75-2515:

a. For elementary endorsement. Applicants shall have completed a minimum of two years in a teacher education program on or before August 31, 1966, and shall submit application for initial certification on or before December 31, 1966. On and after January 1, 1967, applicants shall have completed a four-year college program or its equivalent and shall hold a bachelor's degree.

b. * * * [Same as parent volume.]

Certificates shall be endorsed in accordance with the rules and regulations established by the state board of education for such endorsement.

For purposes of evaluating the qualifications of applicants for teaching certificates, a year means that instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the university of Montana or equivalent institution.

History: En. Sec. 6, Ch. 142, L. 1949; amd. Sec. 1, Ch. 187, L. 1959; amd. Sec. 1, Ch. 34, L. 1965.

Amendment

The 1965 amendment added the second sentence to paragraph a under Class 5 and added to the first sentence of said paragraph a the words "on or before August 31, 1966, and shall submit application for initial certification on or before December 31, 1966."

75-2518. Outstanding certificates for teaching. No provisions of sections 75-2511 through 75-2521, R. C. M. 1947, shall affect or impair the validity of any certificate for teaching in force on July 1, 1959, or the rights and privileges of the holders by virtue thereof, save that any certificate may be suspended or revoked for any of the causes and by the procedures specified by law.

Any holder of an elementary school standard certificate issued prior to July 1, 1959, under previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the rules and regulations of the state board of education until the holder qualifies for the Class 2 standard certificate as provided in section 75-2516, as amended.

Any holder of a Class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the rules and regulations of the state board of education until the holder qualifies for the Class 2 standard certificate as provided in section 75-2516 as amended.

History: En. Sec. 7, Ch. 142, L. 1949; amd. Sec. 3, Ch. 187, L. 1959; amd. Sec. 2, Ch. 34, L. 1965.

Amendment

The 1965 amendment substituted "sections 75-2511 through 75-2521, R. C. M. 1947" for "this act" near the beginning of the first paragraph; and added the third paragraph.

75-2521. Fees for certificates for teaching. For the issuance, renewal or extension of a certificate to teach, each applicant for such certificate shall pay a fee of two dollars ($2.00) for each year that the certificate is in force. Such fee shall be paid to the state superintendent of public instruction, who shall deposit such fees with the state treasurer to the credit of the general fund.

History: En. Sec. 10, Ch. 142, L. 1949; amd. Sec. 62, Ch. 147, L. 1963; amd. Sec. 32, Ch. 121, L. 1965.

Amendments

The 1963 amendment substituted "to the credit of the general fund" at the end of the second sentence for "and report each month to the state auditor the amount of fees collected"; and deleted a third sentence reading, "The state auditor shall credit all such fees to the division of certification of the state department of public instruction."

The 1965 amendment increased the fee specified in the first sentence from $1.00 to $2.00.

CHAPTER 27—TEACHERS' RETIREMENT SYSTEM

Section 75-2701. Definitions.
75-2703. Administration.
75-2707. Benefits.
75-2708. Management of moneys.
75-2709. Method of financing.

75-2701. Definitions. The following words and phrases used in this act shall have the following meanings unless a different meaning is plainly required by the content:

(1) to (12). * * * [Same as parent volume.]

(13) "Earnable compensation" shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of seven thousand dollars ($7,000) per annum, shall not be used for the purpose of this system provided that any teacher who received a salary or compensation in excess of five thousand seven hundred dollars ($5,700) per annum subsequent to July 1, 1961, may use such salary or that portion of it not in excess of seven thousand dollars ($7,000) as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to July 1, 1961 over five thousand seven hundred dollars ($5,700) and not exceeding seven thousand dollars ($7,000) to his individual account in the annuity savings fund and (b) he contributes three and one-half per cent (3½%) of the excess of his salary subsequent to July 1, 1961, over five thousand seven hundred dollars ($5,700) and less than seven thousand dollars ($7,000) to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(14) to (22). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 87, L. 1937; subd. (7) amd. Sec. 1, Ch. 202, L. 1939; amd. Sec. 1, Ch. 215, L. 1939; amd. Sec. 1, Ch. 137, L. 1945; amd. Sec. 1, Ch. 28, L. 1949; amd. Sec. 1, Ch. 216, L. 1953; amd. Sec. 1, Ch. 235, L. 1959; amd. Sec. 1, Ch. 209, L. 1963.

Amendment

The 1963 amendment increased the amounts set forth in paragraph (13) from $6,000 to $7,000 in three places, and from $5,000 to $5,700 in three places; and substituted "July 1, 1961" for "July 1, 1957" in three places in paragraph (13).

Repealing Clause

Section 2 of Ch. 209, Laws 1963 repealed all acts and parts of acts in conflict therewith.

75-2703. Administration. (1) to (6). * * * [Same as parent volume.]

(7) The retirement board shall elect from its membership a chairman, and shall appoint a secretary who may be, but need not be one (1) of its members.

(8) and (9). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 87, L. 1937; amd. Sec. 1, Ch. 157, L. 1953; amd. Sec. 34, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from subsection (7) a second sentence reading, "The secretary shall give bond in such amount and with such sureties as the board may require"; and apparently through clerical error, deleted subsections (10), (11), (12), (13), and (14), for text of which see parent volume.

75-2704. Membership.

Cross-Reference

Community college trustees and teachers eligible, sec. 75-4424.

75-2707. Benefits. (1) Superannuation retirement benefit. (a) Any member who has completed ten years of creditable service, the last

ten years of which shall have been in this state, and who has attained the age of sixty may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) That from and after the passage and approval of this act, any member in service who has attained the age of seventy years, during any school year shall be retired by said retirement board on the first day of September following his or her seventieth birthday, provided, however, that this provision shall not apply to teachers in the Montana university system who may be employed beyond the age of seventy upon the recommendation of the president of the unit concerned to the board of regents. Provided further that such teachers (1) shall not be given credit toward retirement pay for teaching service rendered after the end of the school year in which the age of seventy is attained, (2) shall not contribute to the retirement system after the end of said school year, and (3) shall not have the compensation received after the end of said school year used in computing final average salary. Initial employment of teachers in the Montana university system beyond the age of seventy may be made upon the recommendation of the president of the unit concerned to the board of regents but such employees are denied membership in the teachers' retirement system.

Provided, further, that any retired teacher may be employed as a teacher in Montana and may earn an amount not to exceed one-fourth of his final average compensation without loss of retirement benefits.

(2) Allowance on superannuation retirement. Upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of:

(a) An annuity which shall be actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) A pension of one-quarter of his average final compensation provided his creditable service is at least thirty-five years, otherwise, a pension of one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of his creditable service, and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.

(d) The minimum annual retirement allowance for a member who has completed thirty years service and who retired after September 1, 1937, and before June 30, 1949, shall be twelve hundred dollars ($1,200.00), and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1949, but whose service is less than thirty years shall receive a minimum retirement allowance based on the proportionate amount of twelve hundred dollars ($1,200.00) that his service bears to thirty years of service.

(e) The minimum annual retirement allowance for a member who has completed thirty-five years of service and who has attained the age of sixty-five and who retires after June 30, 1949, shall be twelve hundred dollars ($1,200.00).

(f) In the event a member retired on a superannuation allowance has not received more than three retirement payments prior to death, the beneficiary of the member shall receive a refund of the difference between the total paid and the amount of the accumulated contributions.

(3) Disability retirement benefit. Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service in the state of Montana may be retired by the retirement board not less than thirty and not more than ninety days next following the date of filing such application on a disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

If the applicant for disability retirement was prevented because of the disability from making application at the time of the time of the commencement of disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of disability.

(4) to (7). * * * [Same as parent volume.]

(8) (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid only the amount contributed by the member to his annuity savings account after first deducting any unpaid annual membership fees of said member.

(b) Should a member die before retirement only the amount of the member's contributions to his annuity savings fund account after deducting any unpaid annual membership fees shall be paid to his estate or such person as he shall have nominated by written designation duly executed and filed with the retirement board.

(c) In lieu of benefits provided in (b) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.

If the beneficiary so electing be the surviving spouse of the deceased member, such beneficiary shall receive, in addition to the monthly annuity, provided the deceased member was actively engaged as a teacher in the state of Montana within one (1) year prior to his death, the sum of fifty dollars ($50.00) per month for each child from the pension accumulation fund for the support of the minor child or children of the deceased member until such child or children reach his or her eighteenth birthday.

(9). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 87, L. 1937; amd. Sec. 2, Ch. 137, L. 1945; amd. Sec. 4, Ch. 28, L. 1949; amd. Sec. 4, Ch. 216, L. 1953; amd. Sec. 1, Ch. 160, L. 1955; amd. Sec. 1, Ch. 270, L. 1959; amd. Sec. 1, Ch. 216, L. 1963; amd. Sec. 1, Ch. 33, L. 1965; amd. Sec. 1, Ch. 259, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 33 and once by Ch. 259. Since the changes made by the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

The 1963 amendment increased the minimum annual allowances set forth in paragraphs (d) and (e) of subsection (2) from $900 to $1,200; and in the second paragraph of subsection (3) deleted superfluous words "time of the" before "commencement of disability."

Chapter 33, Laws of 1965, added to subsection (1)(b) the two provisos in the first paragraph, the last sentence of the first paragraph, and the proviso constituting the second paragraph.

Chapter 259, Laws of 1965, deleted "but such payments shall not exceed in any one (1) month the sum of one hundred dollars ($100.00)" from the end of the second paragraph of subdivision (8)(c).

Effective Date

Section 2 of Ch. 259, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

75-2708. Management of moneys. (1) The retirement board shall be the trustees of the moneys collected under this act and the same shall be invested and reinvested by the state board of land commissioners as part of the long term investment fund.

(2) The retirement board annually shall allow regular interest on the average amount for the preceding year on such moneys with the exception of moneys used for administrative expense. The amount so allowed shall be annually credited to such moneys by the retirement board from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the moneys of the retirement system shall be paid by the state during the ensuing year and any excess of earning over such amount required shall be deductible from the amounts to be contributed by the state during the ensuing year. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the retirement board on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

(3) The state treasurer is the custodian of the moneys collected under this act and of the securities in which said moneys are invested. All payments of such moneys shall be made only upon claims signed by two (2) persons designated by the retirement board. A duly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of such person shall be filed with the state controller as his authority for approving such claims.

(4). * * * [Same as parent volume.]

(5) The board may in its discretion transfer the savings account of a member to the pension accumulation moneys if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

(6) All of the funds referred to in section 75-2709 except the expense fund shall be replaced by one or more accounts in the agency fund. The

expense fund shall be replaced by an account in the earmarked revenue fund.

History: En. Sec. 7, Ch. 87, L. 1937; amd. Sec. 3, Ch. 176, L. 1953; amd. Sec. 5, Ch. 216, L. 1953; amd. Sec. 196, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subsection (1), substituted "moneys collected under" for "several funds created by"; in the first sentence of subsection (2), substituted "on such moneys with the exception of moneys used for administrative expense" for "in each of the funds with the exception of the expense fund"; deleted "shall be due and payable to said funds and" after "The amount so allowed" in the second sentence of subsection (2); substituted "to such moneys" for "thereto" in the second sentence of subsection (2); substituted "moneys" for "funds" in the third sentence of subsection (2); substituted "moneys collected under this act" for "several trust funds" and "moneys" for "funds" in the first sentence of subsection (3); substituted "of such moneys" for "from said funds" and "claims" for "vouchers" in the second sentence of subsection (3); substituted "state controller" for "treasurer" and "approving such claims" for "making payments upon such vouchers" in the third sentence of subsection (3); deleted from subsection (3) a fourth sentence reading, "No voucher shall be drawn unless it has previously been authorized by resolution of the retirement board"; substituted "pension accumulation moneys" for "pension accumulation fund" in subsection (5); made minor changes in phraseology; and added subsection (6).

75-2709. Method of financing. There are hereby created and established an "annuity savings fund" and "annuity reserve fund," a "pension accumulation fund," a "pension reserve fund" and an "expense fund," into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.

(1) and (2). * * * [Same as parent volume.]

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each and every employer shall pay into the pension accumulation fund an amount equal to three and seventy-five one hundredths per centum (3.75%) of the earnable compensation of each member employed during the whole or such part of the preceding payroll period as such member was so employed by such employer; provided, however, that no payments shall be made into said pension accumulation fund until after July 1, 1945. Provided, further, until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set up in this act, such parts of such act as deal with reserves to be built up by contributions from the state shall be inoperative. Provided, further, that for each payroll period after July 1, 1975, the employers' contribution shall be three and fifty one hundredths per centum (3.50%).

(b) to (q). * * * [Same as parent volume.]

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 87, L. 1937; amd. Secs. 2 and 3, Ch. 202, L. 1939; amd. Sec. 3, Ch. 137, L. 1945; amd. Sec. 5, Ch. 28, L. 1949; amd. Sec. 1, Ch. 239, L. 1959; amd. Sec. 2, Ch. 216, L. 1963.

Amendment

The 1963 amendment substituted "July 1, 1975" for "July 1, 1965" in the final proviso to paragraph (3) (a); and made a minor change in punctuation.

CHAPTER 30—JUVENILE DISORDERLY PERSONS—COMMITMENT TO INDUSTRIAL SCHOOL

Section 75-3002. Commitment to state vocational school for girls or state industrial school.

75-3002. (1172) Commitment to state vocational school for girls or state industrial school. If the parent, guardian, or other person in charge of any child, shall, upon the complaint under the last section for a failure to cause the child to attend a recognized school, prove inability to do so, then he or she shall be discharged and thereupon the truant officer shall make complaint that the child is a juvenile disorderly person within the meaning of the preceding section. If such complaint is made before any mayor, justice of the peace or police judge, it shall be certified by such magistrate to the district court in and for the county in which the child resides or to a judge of said district court. The district court or the judge thereof to whom the same is certified shall hear such complaint, and if it be determined that the child is a juvenile disorderly person within the meaning of the preceding section the said child shall be committed by the said court, or the judge thereof to whom the complaint was certified, to the state vocational school for girls, state industrial school, or other department of institutions juvenile facility. If for any cause the parent, guardian, or other person in charge of any juvenile disorderly person as defined in the preceding section shall fail to cause such juvenile disorderly person to attend school, the complaint against such juvenile disorderly person shall be made, heard, and determined in like manner as provided in case the parent proves inability to cause such juvenile disorderly person to attend school.

History: Ap. p. Sec. 6, Ch. 45, L. 1903; amd. Sec. 1, Ch. 80, L. 1905; re-en. Sec. 972, Rev. C. 1907; amd. Sec. 1107, Ch. 76, L. 1913; re-en. Sec. 1172, R. C. M. 1921; amd. Sec. 88, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "state vocational school for girls, state industrial school, or other department of institutions juvenile facility" for "industrial school hereinafter provided for, where he shall be subject to all rules and regulations of said industrial school" at the end of the third sentence; and made a separate fourth sentence out of language formerly appearing as a proviso to the third sentence.

CHAPTER 31—SCHOOLHOUSE SITES AND CONSTRUCTION

Section 75-3109. Agreements authorized for joint interstate school facilities.
75-3110. Form of agreement—approval by superintendent of public instruction required.
75-3111. Election on interstate agreement—form of ballot.
75-3112. Location of joint interstate facilities.
75-3113. Financing of joint interstate facilities.

75-3102. (1174) Architecture—approval of state board of health, etc.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-3109. Agreements authorized for joint interstate school facilities. The board of trustees of any school district with boundaries adjoining another state may enter into an agreement and contract with a school

district in such adjoining state to provide for the joint erection, operation and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed upon between such districts in accordance with the provisions of this act.

History: En. Sec. 1, Ch. 240, L. 1965.

Title of Act

An act authorizing school districts adjoining another state to contract with school districts in the neighboring state for the joint erection, operation and maintenance of school facilities for both districts; providing for the financing of such joint facilities; and providing for the approval of contracts for such joint facilities by the electors of the school district.

75-3110. Form of agreement—approval by superintendent of public instruction required. An agreement proposed for adoption by a school board under this act shall be in the form and contain such terms as may be prescribed by the superintendent of public instruction and no agreement shall be submitted to a vote of the people under this act unless it has first been approved in writing by the superintendent of public instruction.

History: En. Sec. 2, Ch. 240, L. 1965.

75-3111. Election on interstate agreement—form of ballot. An approved agreement shall be submitted to the electorate of the school district at a special election called for that purpose or at a regular election for school trustees. The question on the ballot at said election shall be in substantially the following form.

> "Shall the proposed agreement between this school district and school district number ——— of ———————— county, state of ————————, be executed?"

No agreement made pursuant to this act shall be valid until it has been approved by the electors of the district in the manner herein provided.

History: En. Sec. 3, Ch. 240, L. 1965.

75-3112. Location of joint interstate facilities. Facilities erected and maintained under this act may be located either in Montana or such adjoining state.

History: En. Sec. 4, Ch. 240, L. 1965.

75-3113. Financing of joint interstate facilities. The school district entering into such an agreement may borrow money, levy taxes and issue bonds for such joint facilities in the same manner and to the same extent as other school districts within this state.

History: En. Sec. 5, Ch. 240, L. 1965.

CHAPTER 33—SCHOOL BUSES—REQUIREMENTS—DRIVERS' QUALIFICATIONS—CONSTRUCTION AND OPERATION

Section 75-3308. Authority for regulating design, construction and operation of school buses.

75-3308. Authority for regulating design, construction and operation of school buses. (1) to (5). * * * [Same as parent volume.]

(6) The Montana state board of education is authorized to adopt standards and specifications applicable to lighting equipment on and

special warning devices to be carried by school buses, consistent with the provisions of this act, but supplemental thereto; except that such standards and specifications may designate and permit the use of flashing warning lights on school buses for the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 1, Ch. 183, L. 1947; amd. Sec. 1, Ch. 172, L. 1955; amd. Sec. 1, Ch. 68, L. 1961; amd. Sec. 4, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped" in the second paragraph of subsection (6).

Effective Date

Section 5 of Ch. 250, Laws 1965 read "This act shall be in full force and effect from and after July 1, 1966."

CHAPTER 34—TRANSPORTATION OF PUPILS

Section 75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses.
75-3413. Reimbursements.
75-3414. Budgets and levies for transportation.

75-3401. Boards of trustees to furnish transportation.

Cross-Reference

Transportation of pupils living within three miles of school, secs. 75-1641 to 75-1644.

75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses. The board of trustees shall have the power to purchase, or rent and provide for the upkeep, care, operation, maintenance, insurance, for two-way radios and for school buses; or to contract and pay for the transportation of eligible pupils, such contracts to run for terms not to exceed five (5) years; and provided further, that each district owning a school bus or buses may levy a sufficient number of mills to create a reserve of not to exceed twenty per cent (20%) per year of the original cost of the bus or buses for which the reserve is created; said fund to be kept separate and apart from all other funds, and to be used only for the purchase of the bus or buses needed to replace the bus or buses and two-way radios for which said reserve was created, unless authorized by a majority of the votes cast by the qualified electors of the district at an election called for that purpose. Provided, however, that school district trustees may authorize as standard equipment, the installation of two-way radios in a school bus or buses operating in school districts where weather and road conditions may constitute a hazard to the safety of the school pupil passengers. The two-way radios may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county,

with their permission and the permission of the federal communications commission wherein said school bus or buses operate, or any frequency assigned for such operation by the commission.

History: En. Sec. 3, Ch. 152, L. 1941; amd. Sec. 1, Ch. 163, L. 1951; amd. Sec. 1, Ch. 52, L. 1955; amd. Sec. 1, Ch. 202, L. 1957; amd. Sec. 1, Ch. 74, L. 1965.

Amendment

The 1965 amendment increased the maximum size of the reserve described in the first proviso from 12½% to 20% of original cost.

Repealing Clause

Section 2 of Ch. 74, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 74, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

75-3413. Reimbursements. (a) Each school district and each county high school meeting the requirements of this act shall be entitled to reimbursement from such moneys as may be appropriated by the legislature for transportation, in an amount not to exceed one third (⅓) of the schedule provided for transportation, or services rendered in lieu of transportation, semiannually on presentation to the state superintendent of public instruction, through the office of the county superintendent of schools, of certified claims for such reimbursement using for such purpose the forms provided by the state superintendent of public instruction. A school bus route which travels through several school districts shall have the county and state reimbursement prorated among the school districts which are served by this bus route by the county transportation committee and that the schedules provided in this act for individual transportation and bus transportation or services in lieu thereof, shall be used instead of any schedule which may have been heretofore or may hereafter be fixed and promulgated by the state board of education. In determining the cost of transportation or services in lieu thereof, no amount shall be included except those which have been paid out by a school district or county high school in the regular manner provided for the payment of other financial obligations for the maintenance of their schools.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 13, Ch. 152, L. 1941; amd. Sec. 2, Ch. 189, L. 1943; amd. Sec. 1, Ch. 169, L. 1947; amd. Sec. 3, Ch. 200, L. 1949; amd. Sec. 7, Ch. 189, L. 1951; amd. Sec. 1, Ch. 242, L. 1961; amd. Sec. 61, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the first sentence of subsection (a), deleted the phrase "in the state public school equalization fund" after "from such moneys."

75-3414. Budgets and levies for transportation. (a) The board of trustees of any school district maintaining an elementary school, or schools, or providing for the transportation of its pupils to attend an elementary school or schools, outside the district, or furnishing services in lieu thereof, shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor, which budget shall show in detail and by items the estimated expenditures and receipts for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the district to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any pupils not

residing in the district at the time of adoption of the transportation budget who subsequently become residents of the district during the budget year. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budgeted expenditures of the district arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less than one hundred dollars ($100), the ten per cent (10%) limitation shall not apply and the district may budget for a contingency item of up to but not exceeding one hundred dollars ($100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. The total amount of the estimated expenditures, as shown by such transportation budget, shall be shown and included in the elementary school budget form and the estimated receipts from reimbursements, as shown in such transportation budget, shall be shown and included in the elementary budget form as provided. A copy of the elementary transportation budget adopted, together with a duly signed copy of each and every contract form pertaining thereto shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the elementary school budgets are required to be so transmitted.

(1) When the total elementary transportation budget has been presented in detail on approved forms including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, and after deducting all estimated receipts including reimbursements, the balance of the budget shall be paid out of receipts from a tax levied upon all the taxable property of the school district.

(2) The board of trustees of every school district maintaining a high school, or furnishing transportation for its pupils to another high school, or services in lieu thereof, and the board of trustees of every county high school, shall have the authority and it shall be its duty to provide a complete transportation budget therefor, including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, or any service in lieu of transportation. The budget shall show in detail and by items the estimated expenditures and receipts, including the state transportation reimbursements, for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the high school to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any high school pupils not residing in the high school territory under the jurisdiction of the trustees at the time of adoption of the transportation budget who subsequently become residents of said territory during the budget years. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budget[ed] expenditures of the high school arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less

than one hundred dollars ($100), the ten per cent (10%) limitation shall not apply and the high school may budget for a contingency item of up to but not exceeding one hundred dollars ($100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. A copy of the high school transportation budget adopted for each high school, together with a duly signed copy of each and every contract form pertaining thereto, shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the final high school budgets are required to be so transmitted. For each high school transportation budget arrived at according to the schedule set up in section 75-3407, the amount remaining after deducting all estimated local receipts, and state transportation reimbursements from the total amount required for the transportation budget according to the schedule, shall be the amount required to be raised by tax levy for such high school transportation budget, and the total of all such amounts required to be raised by tax levy for all such high school transportation budgets shall be the total amount required to be raised by county-wide transportation levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that this amount shall not be more than two-thirds (⅔) of the total of each high school transportation budget according to the schedule as set forth in section 75-3407. The amount remaining in each high school transportation budget over and above the amount arrived at according to the schedules in section 75-3407, as amended, shall be the amount required to be raised by tax levy for each such high school transportation budget and all such amounts required to be raised by tax levy for each such high school transportation budget shall be the total amount required to be raised by high school transportation levy on the high school district if there be one; and in case of a county high school by a county levy, excluding those districts maintaining high schools, otherwise on the common school district, of which each particular high school is a part, and the county commissioners shall make a levy of such number of mills as will raise such needed amount; provided that the amount budgeted for high school transportation in any high school budget shall not be deemed or considered as a part of or included within the maximums for high school budgets as fixed and determined by chapter 199, Laws of 1949, as amended, and the county-wide high school transportation levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-4516.1, unless the trustees making such budget so desire and the board of county commissioners find that such high school transportation levy is not required to raise the amount necessary for such budget for all purposes including transportation or services in lieu thereof. Cash balances on hand at the end of the fiscal year shall be used to reduce the district levy for the ensuing year, provided that if there is a cash balance on hand at the end of a fiscal year and no district levy is required for the ensuing fiscal year under the foregoing provisions, then said cash balance shall be used to reduce the amount to be raised by county-wide levy as herein provided.

History: En. Sec. 14, Ch. 152, L. 1941; amd. Sec. 3, Ch. 189, L. 1943; amd. Sec. 8, Ch. 189, L. 1951; amd. Sec. 1, Ch. 126, L. 1961; amd. Sec. 1, Ch. 106, L. 1963.

Amendment

The 1963 amendment added the final sentence to paragraph (2).

CHAPTER 35—FREE TEXTBOOKS

Section 75-3503. Textbooks—license to sell—conditions.
75-3505. Textbooks—special or abridged editions.

75-3503. Textbooks—license to sell—conditions. Before any person, company, or corporation shall offer to any school district any textbook for adoption, sale or exchange, in the state of Montana, said person, company, or corporation shall comply with the following conditions:

First: Such person shall file a copy of such textbook in the office of the state superintendent of public instruction, with a sworn statement of the list price; the lowest wholesale price; and the lowest exchange price that will be given when old books in the same subject and of the like kind and grade, but of a different series, are received in exchange, such exchange price to be based on a three (3) year adoption period. Such prices are to be quoted FOB Chicago, FOB San Francisco, FOB any other city from which publishers may ship books, and FOB a textbook depository in Montana.

Second: Such persons shall file with the state superintendent of public instruction a written agreement, (1) to furnish said book or books to any school board in the state of Montana at the said lowest price so filed, and to maintain said prices uniformly throughout the state; (2) to reduce such prices automatically in Montana whenever reductions are made elsewhere in the United States; and (3) to guarantee that at no time shall any book so filed by such persons, be sold in Montana at a higher price than is received for such book elsewhere in the United States under similar conditions of transportation and marketing.

Third: Such persons shall file and maintain with the secretary of state a surety bond for not less than two thousand dollars ($2,000.00) and not more than ten thousand dollars ($10,000.00), such bond to be in an amount to be fixed by the state superintendent of public instruction and to run to the state of Montana, to be conditioned on the faithful performance of all things on the part of such persons to be performed under this act and such bond to be approved by the attorney general. Upon compliance with the foregoing conditions the state superintendent of public instruction shall issue a license to any such person to sell such textbooks to school districts in the state of Montana.

Fourth: License fees. The person receiving such license shall pay a fee of two dollars ($2.00) for each book listed; provided that in the case of several books presented by one publisher in the same subject under the same series head for any one grade, the maximum filing fee in such case shall not exceed six dollars ($6.00). Such moneys received through payment of said filing fees shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 138, L. 1941; amd. Sec. 63, Ch. 147, L. 1963; amd. Sec. 33, Ch. 121, L. 1965.

Amendments

The 1963 amendment substituted "deposited in the state treasury to the credit

of the general fund" at the end of the section for "used to defray all expenses incurred under the provisions of this act. Provided that any surplus which might exist at the end of any biennium shall be transferred to the state public school general fund."

The 1965 amendment increased the fee specified near the beginning of paragraph Fourth from $1.00 to $2.00; and increased the maximum fee specified at the end of the first sentence of paragraph Fourth from $3.00 to $6.00.

Separability Clause

Section 34 of Ch. 121, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

75-3505. Textbooks—special or abridged editions. Whenever the publisher shall prepare an abridged or special edition of any of his books listed with the state superintendent of public instruction and shall supply such special edition elsewhere at a lower wholesale price than the wholesale price for the edition filed with the state superintendent of public instruction, the publisher must agree to furnish such special edition at the wholesale price at which it is furnished elsewhere, so long as it is supplied at the said lower price anywhere outside of Montana; and it shall be understood that the bond given by the publisher shall cover this provision as to special editions. In case an action is brought on such bond, the state, if successful, shall recover the full amount of the bond, which amount shall be paid into the state general fund.

History: En. Sec. 4, Ch. 138, L. 1941; amd. Sec. 64, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "state general fund" for "state public school general fund" at the end of the section.

CHAPTER 36—UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS—STATE SUPPORT—SCHEDULE OF CONTRIBUTIONS

Section 75-3611. Definitions—schedules of financial program.
75-3612. Foundation program.
75-3612.1. Increase in foundation program in anticipation of unusual increase in enrollment—formulas for computation.
75-3612.2. Minimum increase required for application of act.
75-3612.3. Provisions supplemental.
75-3613. State equalization aid to public schools—enumeration of sources—definition.
75-3614. State board of education to administer state public school equalization aid.
75-3615. State superintendent of public instruction to compile data and make reports concerning state equalization aid.
75-3616. Distribution of funds—reports required.
75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application.
75-3618. Distribution of money available to districts—formula for apportionment of county funds.
75-3619. Formula for distribution of state funds.
75-3620. State superintendent to give notice if state funds inadequate.
75-3621. Resolution to issue warrants—hearing.
75-3624. State payments for children of employees residing at state institutions.

75-3611. Definitions—schedules of financial program. The term "average number belonging" or "ANB" shall mean the average number of

regularly enrolled, full-time pupils attending a public school, or attending public schools in a school district as a whole, which average number shall be computed by dividing the sum of the aggregate days of attendance by regularly enrolled pupils and the aggregate days of absence by regularly enrolled pupils during the last completed school year, by the number one hundred eighty (180); provided that attendance for a part of a morning session or part of an afternoon session shall be counted as one-half (½) day's attendance in either case, and provided further, when any regularly enrolled pupil has been absent, with or without excuse, for more than three (3) consecutive school days in such school year, his absence after the third day and until his return to school shall not be included in the aggregate days of absence. The average number belonging of secondary pupils of a school district or of elementary pupils of a school district does not include the pupils of any high school or of any elementary school which has not been accredited by the state board of education. Pupils of a junior high school which has been duly approved and accredited as such by the state board of education are to be deemed secondary school pupils for the purpose of computing average number belonging of the district in which the junior high school is situated.

Any school district may reopen a school which was not in operation the previous year, which such reopening is approved by the county budget board and the state superintendent of public instruction, and when the county superintendent estimates the probable enrollment for such school to be at least five (5), and the parents of at least three (3) of these five (5) children petition for such reopening; such approved reopened school shall be eligible for county and state aid on its foundation program. Any school district which opens a new school shall comply with at least the minimum requirements for reopening a closed school as herein provided, and no foundation program shall be established for any new school not meeting the minimum requirements for opening.

Should a school district anticipate an increase in ANB, above the normal state-wide increase of the past year, due to the closing of any private or public school in the district or in neighboring districts, such district shall be allowed an increase in ANB for budget purposes, based on an estimate arrived at by the district superintendent, board and county superintendent and approved by the state superintendent.

The terms, "minimum foundation program" and "foundation program," shall mean the amount required to operate and maintain an adequate and efficient school, as fixed and established by the schedules of minimum operating revenues set forth in section 75-3612.

The term "isolated school," shall mean an elementary school having an ANB of nine (9) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617; and the term, "isolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617.

The term, "nonisolated school," shall mean an elementary school having an ANB of less than ten (10) pupils, which has not been approved

as an isolated school; and the term, "nonisolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, which has not been approved as an isolated high school.

History: En. Sec. 2, Ch. 199, L. 1949; amd. Sec. 1, Ch. 107, L. 1951; amd. Sec. 1, Ch. 207, L. 1953; amd. Sec. 1, Ch. 104, L. 1961; amd. Sec. 4, Ch. 267, L. 1963.

Amendment

The 1963 amendment increased the maximum size of isolated elementary schools, as defined in the next to last paragraph, from eight to nine pupils; increased the size of nonisolated elementary schools, as defined in the last paragraph, from less than nine to less than ten pupils; and increased the size of nonisolated high schools, as defined in the last paragraph, from less than 20 to less than 24 pupils.

75-3612. Foundation program. The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt retirement, and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

Elementary Schools

The foundation program shall be seventy-five per cent (75%) of the maximum budget as set forth in section 75-1713.1, R. C. M. 1947 except for an elementary school having an ANB of nine (9) or fewer pupils which is not approved as an isolated school; for such school the minimum general fund budget shall be seventy-five per cent (75%) of the maximum budget as set forth in section 75-1713.1, R. C. M. 1947, provided that the formula for apportioning county funds as provided in section 75-3618, R. C. M. 1947 and the formula for apportioning state equalization aid as provided in section 75-3619, R. C. M. 1947 shall apply only to one-half of such minimum budget of such school, and provided further that the remaining one-half of such minimum budget shall be financed by a tax levied on the property of the school district in which such school is located.

High Schools

The foundation program shall be seventy-five per cent (75%) of the maximum budget as set forth in section 75-4518.1, R. C. M. 1947.

History: En. Sec. 3, Ch. 199, L. 1949; amd. Sec. 1, Ch. 244, L. 1953; amd. Sec. 1, Ch. 241, L. 1955; amd. Sec. 1, Ch. 251, L. 1957; amd. Sec. 1, Ch. 267, L. 1959; amd. Sec. 1, Ch. 230, L. 1961; amd. Sec. 52, Ch. 147, L. 1963; amd. Sec. 5, Ch. 267, L. 1963; amd. Sec. 1, Ch. 93, L. 1965.

Amendments

Chapter 147, Laws 1963, substituted "available for state equalization aid" for "coming into said state public school equalization fund" after "The moneys" at the beginning of the section.

Chapter 267, Laws 1963, incorporated the change made by Ch. 147 and completely rewrote the material under the headings "Elementary Schools" and "High Schools." For previous text, see parent volume.

The 1965 amendment added the exception at the end of the paragraph designated "Elementary Schools."

Effective Date

Section 2 of Ch. 93, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

75-3612.1. Increase in foundation program in anticipation of unusual increase in enrollment—formulas for computation. A school district or county high school which anticipates an unusual increase in enrollment in the ensuing year may increase its foundation program for the ensuing year in accordance with the following provisions:

(1) For the school district or county high school, the average number belonging approved for foundation program purposes for the current year and each of the immediately preceding three (3) years shall be used to compute the annual percentage increase in average number belonging of each of the years over the immediately preceding year. The three (3) increases shall be averaged to obtain the average annual percentage increase in average number belonging.

(2) On or about May 1 of the current year, the estimated average number belonging for the entire current school year shall be computed, based on pupil attendance and absence records through April 30, increased by the ratio that the total number of school days in the current term bears to the number of school days completed through April 30.

(3) On or about May 1, the board of trustees shall estimate the probable average number belonging to be attained in the ensuing school year, based on such factual information as may be available to the board. The board of trustees shall submit such estimated average number belonging to the county board of school budget supervisors on or before May 10, for approval of the estimate as the probable average number belonging to be attained during the ensuing year. The estimate shall be accompanied by such data as the county board of budget supervisors may require. The county board of budget supervisors shall act to approve or disapprove the estimated average number belonging on or before May 25, and may adjust any estimate submitted. The county board of budget supervisors shall immediately notify the superintendent of public instruction of the action taken by the board, together with such facts and information as the superintendent of public instruction may deem necessary. The superintendent of public instruction shall approve, disapprove, or adjust the estimate and so notify the board of trustees.

(4) The percentage increase of the average number belonging estimated for the ensuing year approved as in (3) above, over the estimated average number belonging for the current year computed as in (2) above, shall be computed.

(5) Whenever the increase computed in (4) above is at least twice the average annual increase computed in (1) above, the school district or county high school, for the purpose of determining the amount of its foundation program for the ensuing year, may increase the actual average number belonging for the current year by a number to be computed as follows:

(a) Apply the average annual percentage increase as computed in (1) above to the actual average number belonging of the current year to determine the usual average number belonging which would be attained in the ensuing year under normal conditions;

(b) Deduct from the estimated average number belonging for the ensuing year approved as in (3) above, the usual average number belong-

ing for the ensuing year as determined in (a) above. The difference shall be the maximum additional average number belonging which may be added to the actual average number belonging for the purpose of establishing the ensuing year's foundation program.

History: En. Sec. 1, Ch. 265, L. 1963.

Title of Act

An act providing for the allowance of an increase in average number belonging for budget purposes where a school district or county high school anticipates an unusual increase in enrollment in the ensuing year; and providing the procedure for determining the average number belonging.

75-3612.2. Minimum increase required for application of act. The provisions of this act shall not apply to any district or high school in which the average annual percentage increase in average number belonging as computed in subsection (1) of section 1 [75-3612.1(1)] is less than three per cent (3%).

History: En. Sec. 2, Ch. 265, L. 1963.

75-3612.3. Provisions supplemental. The provisions of this act shall be in addition to, and not a limitation upon, the provisions of section 75-3611 with respect to anticipated increases in average number belonging.

History: En. Sec. 3, Ch. 265, L. 1963.

75-3613. State equalization aid to public schools — enumeration of sources—definition. There shall be paid into the earmarked revenue fund, for state equalization aid to the public schools of the state, the present allocation equal to twenty-five per cent (25%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935; and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under sections 84-1501 to 84-1519, as provided in section 84-1901; and one-half (½) of the funds received from the treasurer of the United States as the state's share of oil and gas royalties under the act of Congress of February 25, 1920. The term "state equalization aid" as used in the code includes moneys coming to the state from the sources referred to above, plus any legislative appropriation of moneys from other sources for distribution to the public schools.

History: En. Sec. 5, Ch. 199, L. 1949; amd. Sec. 53, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

75-3614. State board of education to administer state public school equalization aid. The state board of education shall administer and distribute state equalization aid in the manner and with the powers and duties provided in this act. Said board shall have the power to require such reports from the county superintendent of schools, county budget boards, county treasurers and school trustees as it may deem necessary, and shall provide rules and regulations for the purpose of carrying out the provisions of this act.

History: En. Sec. 6, Ch. 199, L. 1949; amd. Sec. 54, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "shall administer and distribute state equalization aid" in the first sentence for "is hereby declared to be the public school equalization board to administer and distribute said public school equalization fund."

75-3615. State superintendent of public instruction to compile data and make reports concerning state equalization aid. The state superintendent of public instruction shall keep in his office full and complete data concerning moneys available for state equalization aid and, in addition thereto, after July 1, 1949, the requirements of the various school districts of the state for aid from said funds to maintain the foundation financial program herein provided. The state superintendent of public instruction shall report to the state board of education at its meetings to be held in the months of July and December in each year the estimated amount which will be available for state equalization aid for the succeeding six months period, commencing January 1, and July 1. In any year when a session of the state legislative assembly convenes, the state superintendent of public instruction shall report to both branches of the assembly all figures and data available in his office concerning disbursements of state equalization aid during the preceding two years, the amount then available for state equalization aid, and apportionment made of the moneys available for state equalization aid but not yet paid out, and the latest estimate of accruals of moneys available for state equalization aid.

History: En. Sec. 7, Ch. 199, L. 1949; amd. Sec. 55, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "moneys available for state equalization aid" in the first sentence for "accruals and credits to the state public school equalization fund"; substituted "available for state equalization aid" near the end of the second sentence for "in the state public school equalization fund"; substituted "disbursements of state equalization aid" in the third sentence for "disbursements from said fund"; substituted "available for state equalization aid" in the third sentence for "standing to the credit of said fund" and for "of said fund"; and substituted "of moneys available for state equalization aid" at the end of the section for "to said fund."

75-3616. Distribution of funds—reports required. After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements of state equalization aid within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, as established by its budget duly approved for the current school year, will not have sufficient funds to maintain the foundation financial program after receipt by it of its apportioned share of interest and income moneys, if any, and from the basic county levies provided for by section 75-3706 and section 75-4516.1. The school district budgets approved and adopted according to law for the current school year, and so verified by the state superintendent of public instruction, shall be the basis for distributing state equalization aid, and the state board of education shall not increase or reduce the state equalization aid to which any school district or county high school is entitled for any school year on the basis of its budget, on account of any difference which may occur during the year between budgeted and actual receipts from any other source of school revenue.

Each order of the state board of education for disbursements of state equalization aid, shall be certified to the state auditor and state treasurer, whereupon the state auditor shall draw his warrants in accordance with

such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order.

Any undistributed state equalization aid remaining at the end of any fiscal year shall be distributed in accordance with the following provisions, for the purpose of reducing the amount of the basic county levy for high schools to be levied in the ensuing fiscal year.

(1) The unexpended balance of the general fund appropriation for state equalization aid shall be added to the unexpended moneys in the earmarked revenue fund account designated for state equalization aid;

(2) The sum obtained in paragraph (1) shall be divided by the statewide total average number belonging which was verified as the basis for all foundation programs for the year ended June 30 to obtain a per pupil payment amount;

(3) For each county, the per pupil payment amount shall be multiplied by the verified ANB for all foundation programs in the county for the year ended June 30 to obtain a county payment amount;

(4) For each county an amount equivalent to the county payment obtained in paragraph (3) shall be transmitted by the state treasurer to the county treasurer on or before July 20 of the immediately ensuing fiscal year, and the county superintendent of schools shall be notified of such amount by the state superintendent of public instruction. The county treasurer shall credit the payment to the account for the basic special tax for high schools as provided in section 75-3722.

(5) The amount of revenue anticipated from the basic county levy for high schools as provided in section 75-4516.1 shall be computed from the number of mills required for such levy and the taxable valuation of all taxable property within the county.

(6) The county payment amount obtained in paragraph (4) shall be deducted from the basic county levy amount obtained in paragraph (5), and the remainder shall be the amount of the basic county levy to be fixed for high schools for the ensuing year; the number of mills of such basic county levy for high schools shall be based on the amount so obtained, together with the taxable valuation of all taxable property within the county.

In any year when application of the provisions of this section would result in a per pupil payment amount of less than one dollar ($1.00), the provisions of this section shall not apply.

History: En. Sec. 8, Ch. 199, L. 1949; amd. Sec. 1, Ch. 60, L. 1961; amd. Sec. 56, Ch. 147, L. 1963; amd. Sec. 6, Ch. 267, L. 1963; amd. Sec. 2, Ch. 198, L. 1965.

Amendments

Chapter 147, Laws 1963, substituted "of state equalization aid" for "from the state public school equalization fund" after "disbursements" near the beginning of the section; substituted "apportioned share of interest and income moneys" in the first paragraph for "apportioned share from the permanent school fund of the state, from other constitutional sources"; substituted "amount of state equalization aid apportioned to any school district" in the former proviso to the first paragraph for "amount apportioned to any school district from said state public school equalization fund"; substituted "amount of interest and income moneys apportioned to such school district" in the former proviso to the first paragraph for "amount apportioned to such school district from the permanent school fund"; deleted "acting as the public school equalization board" which followed "state board of education" near the beginning of the second paragraph; and substituted "state equalization aid" for "funds from the state public school equalization fund"

after "disbursements of" in the second paragraph.

Chapter 267, Laws 1963, incorporated the first change made by Ch. 147, Laws 1963; substituted "and from the basic county levies provided for by section 75-3706 and section 75-4516.1" at the end of the first paragraph for "from the district levy of five mills for the foundation program provided for by section 75-1723, the county levies provided for by this act, and from all other regular sources of revenue required to be used to finance the foundation program as provided in sections 75-1723 and 75-4516.1"; deleted from the end of the first paragraph a proviso which (after amendment by Ch. 147, Laws 1963) read: "provided, however, that the amount of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district, shall not exceed fifty per cent (50%) of the total foundation program of such district, computed at the rates and amounts set forth in section 75-3612"; and incorporated the changes made in the second paragraph by Ch. 147, Laws 1963.

The 1965 amendment adopted the changes made by both 1963 amendments; added the second sentence to the first paragraph; and added all of the material following the second paragraph.

75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application. Before any elementary school having an ANB of nine (9) or less may be approved as an isolated school, and before any high school having an ANB of twenty-four (24) or less may be approved as an isolated high school, the board of trustees of the district wherein said school is located shall, on or before the first day of May in each year, make written application to the budget board for such approval. Such application shall be acted upon on or before the fifteenth day of June, and such application shall be granted if said budget board shall find and determine that transportation of the pupils of such school to another school is impractical by reason of the existence of obstacles to travel, such as mountains, rivers, poor roads, distance of pupils' homes from county roads or highways, or the distance of such isolated school from the nearest open school having room and facilities for the pupils of such isolated school; and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state superintendent of public instruction of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school, and if none of the above-mentioned circumstances exist, such application shall be denied.

History: En. Sec. 16, Ch. 199, L. 1949; amd. Sec. 2, Ch. 230, L. 1961; amd. Sec. 7, Ch. 267, L. 1963; amd. Sec. 1, Ch. 117, L. 1965.

Amendments

The 1963 amendment substituted "nine (9)" for "eight (8)" near the beginning of the section in the phrase pertaining to elementary schools; deleted "said budget board shall find and determine that" before "transportation of the pupils" near the beginning of the second sentence; and substituted "or other conditions resulting in unusual hardship to the pupils, such school shall be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state board of education" near the end of the section for "and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state superintendent of public instruction of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school."

The 1965 amendment restored the clauses "said budget board shall find and determine that" and "and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of

schools and by the state superintendent of public instruction of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school" which had been deleted by the 1963 amendment; and deleted the clauses which had been substituted near the end of the section by the 1963 amendment.

Effective Date

Section 2 of Ch. 117, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

75-3618. Distribution of money available to districts—formula for apportionment of county funds. After the deduction of transportation reimbursements provided by law, the proceeds of the basic county twenty-four (24) mill common school levy as provided for in section 75-3706 and the proceeds of the basic special tax for high schools, as provided for in section 75-4516.1 shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such basic county levy when added to interest and income moneys available to the respective districts, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the basic county common school levy and the proceeds of the basic county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after county and state equalization aid have been received:

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the basic county levy) bears to the total costs of the foundation program for all such districts.

2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the basic county levy) bears to the cost of the foundation program of each such district.

3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of such county funds but shall be excluded from further consideration under this section.

4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the basic county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the basic county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

5. No district school shall be deprived of its needful share of either county levy by reason of it being nonaccredited.

6. No territory situated within the county shall be excluded from the distribution of the school funds of the county solely because such territory lies within the boundaries of a joint district.

History: En. Sec. 17, Ch. 199, L. 1949; amd. Sec. 1, Ch. 182, L. 1951; amd. Sec. 1, Ch. 272, L. 1955; amd. Sec. 4, Ch. 151, L. 1961; amd. Sec. 57, Ch. 147, L. 1963; amd. Sec. 8, Ch. 267, L. 1963; amd. Sec. 3, Ch. 198, L. 1965.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 267. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "interest and income moneys available to the respective districts" in the second sentence of the first paragraph for "all other funds available to the respective districts from the permanent school fund."

Chapter 267, Laws 1963, substituted "the proceeds of the basic county twenty-five (25) mill common school levy as provided for in section 75-3706 and the proceeds of the basic special tax for high schools, as provided for in section 75-4516.1" near the beginning of the section for "the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools"; inserted "basic" before "county levy" near the beginning of the second sentence, before "county common school levy" and before "county special tax" later in the second sentence, and before "county levy" in each of paragraphs 1 and 2 and two places in paragraph 4; deleted "and the five (5) mill tax for elementary schools provided for in section 75-1723" after "county levy" near the beginning of the second sentence; deleted "the uniform district levy and" before "county and state equalization aid" near the end of the preliminary paragraph; and inserted "such" before "county funds" in paragraph 3.

The 1965 amendment reduced the common school levy from 25 to 24 mills.

75-3619. Formula for distribution of state funds. At any time when the total requirements of the several counties of the state for state equalization aid in support of the elementary school and high school foundation financial programs of the school districts within said counties shall exceed the funds available, the funds on hand shall, subject to the limitation hereinafter specified, be apportioned and paid out to the several county treasurers in accordance with the following procedure:

(1) Determine the ratio that the total funds available to all counties in the state in support of the foundation financial program (including the funds available for state equalization aid) bears to the total cost of the foundation financial program in all counties.

(2) Determine the ratio that the total funds available to each county in support of the foundation financial program (excluding any payment for state equalization aid) bears to the cost of the foundation financial program of all school districts of the county.

(3) Counties in which the ratio, as determined in (2) above, exceeds the ratio in (1) above, shall not be entitled to distribution of state equalization aid but shall be excluded from further consideration under this section.

(4) After elimination of counties referred to in (3) above, determine the ratio that the total funds available to all remaining counties in support of the foundation financial program (including the total amount available for state equalization aid), bears to the total cost of the foundation financial program of all such remaining counties. Each remaining county shall then be entitled to distribution of funds for state equalization aid, which, when added to all other funds available to such county in

support of the foundation financial program, shall be sufficient to finance such proportionate part of the total foundation financial program of all school districts in the county.

The county superintendent of schools shall distribute the funds received by such county from the state for state equalization aid to the respective elementary districts and high schools in proportion to the needs of each respective elementary district and high school under the foundation financial program, such distribution to be made by applying to the receipts from the state for state equalization aid the formula provided in section 75-3618 for the distribution of the proceeds of basic county levies.

History: En. Sec. 18, Ch. 199, L. 1949; amd. Sec. 58, Ch. 147, L. 1963; amd. Sec. 9, Ch. 267, L. 1963; amd. Sec. 4, Ch. 198, L. 1965.

Amendments

Chapter 147, Laws 1963, substituted "state equalization aid" near the beginning of the section for "payment from the state public school equalization fund"; deleted "in said equalization fund" after "funds available" in the preliminary paragraph; substituted "for state equalization aid" for "in the equalization fund," "from the equalization fund," or "from the public school equalization fund" in paragraphs (1) and (2), twice in paragraph (4), and twice in the final paragraph; and substituted "of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district" in the former proviso to paragraph (4) for "apportioned to any school district from said state public school equalization fund, when added to the amount apportioned to such school district from the permanent school fund, shall."

Chapter 267, Laws 1963, incorporated the changes made by Ch. 147, Laws 1963; inserted the proviso constituting the proviso before the numbered paragraphs; deleted from the end of paragraph (4) a proviso which (after amendment by Ch. 147, Laws 1963) read, "provided, however, that the amount of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district not exceed fifty per cent (50%) of the total foundation program of such district"; and inserted "basic" before "county levies" at the end of the section.

The 1965 amendment deleted a former second paragraph, preceding paragraph (1), which read: "Provided that seventy per cent (70%) of state equalization aid shall be set aside for the common schools and thirty per cent (30%) of state equalization aid shall be set aside for high schools, and provided further that such allocation shall not prevent a transfer of funds if revenues for the common schools shall be in excess of the foundation program requirement for common schools" and substituted "aid" for "fund" after "state equalization" in paragraph (3).

75-3620. State superintendent to give notice if state funds inadequate. On or before June 1, 1949, if the requirements of the several school districts of the state for state equalization aid shall exceed the moneys available, as soon as such facts shall have been ascertained, the state superintendent of public instruction shall certify to each county superintendent of schools the amount which will be available for state equalization aid for the school districts of his county, and the estimated deficiency of funds for state aid in support of these foundation financial programs and transportation budgets. The county superintendent, upon receipt of such certificate shall notify each school district clerk in his county of the information contained therein.

History: En. Sec. 19, Ch. 199, L. 1949; amd. Sec. 59, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "for state equalization aid" in two places in the first sentence for "for aid from the state public school equalization fund" and for "from said equalization fund"; and deleted "to said fund" after "exceed the moneys available" in the first sentence.

75-3621. Resolution to issue warrants—hearing. After July 1, 1949, the boards of trustees of any school district which will have insufficient funds to meet its approved budget for operating expense; including transportation expense, because of a deficiency in state equalization aid, may, by majority vote, adopt a resolution authorizing the issuance of warrants in excess of funds on hand for payment of budgeted expenses which shall not exceed, in the aggregate, the deficiency in payments of state equalization aid.

Such resolutions must be adopted at a regular or special meeting of the board, and notice of the time and place of such meeting and the text of the proposed resolution shall be given ten (10) days prior to the meeting by posting copies of such notice at three (3) public places in the district and by one (1) publication of such notice in a newspaper generally circulated in the district not less than ten (10) days prior to said meeting.

Any taxpayer on property within the district, and any parent or guardian of a school child residing in the district, may attend such meeting and be heard in support of or in opposition to such resolution. The deficiency of state equalization aid, evidenced by the certificate of the state superintendent, as provided for in section 75-3620 shall be sufficient cause for adoption of the resolution.

History: En. Sec. 20, Ch. 199, L. 1949; amd. Sec. 60, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in state equalization aid" or "of state equalization aid" for "in the state public school equalization fund" after "deficiency" in the first paragraph, for "from said state fund" at the end of the first paragraph, and for "of the state public school equalization fund" in the second sentence in the third paragraph.

75-3624. State payments for children of employees residing at state institutions. (1) As used in this act "employee" means an employee of a public institution as defined in section 80-1203, R. C. M. 1947, who resides on the property of the public institution.

(2) A school district shall receive annually from moneys available for state equalization aid one hundred fifty dollars ($150.00) for each elementary pupil, and two hundred fifty dollars ($250.00) for each high school pupil, whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the district where the pupil attends school.

(3) The school board of a school district which is eligible for such aid shall apply to the state superintendent of public instruction.

(4) Payments received under this act shall be deposited to the credit of the general fund of the school district. Such payments shall not be considered as part of normal state equalization aid.

History: En. Sec. 1, Ch. 101, L. 1965.

Compiler's Note

Section 80-1203, referred to in subsection (1) of this section, was repealed by Sec. 101, Ch. 199, Laws 1965. However, the same institutions are now listed in section 80-1403.

Title of Act

An act providing for payments by the state to school districts if children of a state employee who resides on the property of a state institution attend school in the district.

CHAPTER 37—FINANCE

Section 75-3701. Public school fund.
75-3706. Common school levy.
75-3722. Duties of county treasurer.

75-3701. (1201) **Public school fund.** The principal of the public school fund shall be carried by the state treasurer as a subfund in the trust and legacy fund and shall remain irreducible and permanent. That said fund shall be derived from the following sources, to wit: Appropriations and donations by the state; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum (5%) of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 15 of the Enabling Act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools, and such other funds as may be provided by the legislative enactment.

History: Ap. p. Sec. 1940, Pol. C. 1895; amd. Sec. 11, p. 133, L. 1897; re-en. Sec. 993, Rev. C. 1907; re-en. Sec. 2000, Ch. 76, L. 1913; re-en. Sec. 1201, R. C. M. 1921; amd. Sec. 223, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote the first sentence, which previously read: "The principal of the state school fund shall remain irreducible and permanent."

75-3706. (1202) **Common school levy.** In addition to the provisions for the support of the common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual basic tax of twenty-four (24) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a basic levy of less than twenty-four (24) mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser basic levy shall be made, but no school district within a county levying less than the basic twenty-four (24) mills shall receive any apportionment of state equalization aid; it shall be the duty of the board of county commissioners to levy, if necessary, an additional tax in such number of mills on the taxable value of all taxable property within the county as shall be required to provide the foundation program for all school districts within the county. The county superintendent shall apportion the proceeds of such additional tax levy to each school district within the county after apportionment of the basic county common school levy as provided in section 75-3618 and the state equalization aid as provided in section 75-3619.

For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for violations of law, unless otherwise specified by law. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxation.

History: Ap. p. Sec. 44, p. 630, Cod. Stat. 1871; re-en. Sec. 43, p. 132, L. 1874; re-en. Sec. 1130, 5th Div. Rev. Stat. 1879; re-en. Sec. 1902, 5th Div. Comp. Stat. 1887; amd. Sec. 1940, Pol. C. 1895; amd. Sec. 1940a, p. 134, L. 1897; amd. Sec. 1, p. 12, L. 1901; amd. Sec. 1, Ch. 51, L. 1907; re-en. Sec. 994, Rev. C. 1907; amd. Sec. 2001, Ch. 76, L. 1913; amd. Sec. 31, Ch. 196, L. 1919; re-en. Sec. 1202, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1929; amd. Sec. 1, Ch. 273, L. 1947; amd. Sec. 11, Ch. 199, L. 1949; amd. Sec. 10, Ch. 267, L. 1963; amd. Sec. 5, Ch. 198, L. 1965.

Amendments

The 1963 amendment inserted "basic" before "tax" or "levy" in three places; increased the specified levy from ten to twenty-five mills; made minor changes in phraseology; and added to the first paragraph the words "it shall be the duty of the board of county commissioners to levy, if necessary, an additional tax in such number of mills on the taxable value of all taxable property within each school district as shall be required to provide the foundation program for such school district."

The 1965 amendment reduced the specified levy from 25 to 24 mills; substituted "of state equalization aid" for "from the state public school equalization fund" after "apportionment"; substituted "the county" for "each school district" after "taxable property within" near the end of the first sentence; substituted "all school districts within the county" for "such school district" at the end of the first sentence of the first paragraph; and added the second sentence to the first paragraph.

75-3722. (1213) Duties of county treasurer. It shall be the duty of the county treasurer of each county:

1. To receive and hold all school moneys and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent. A separate account shall be maintained for each fund supported by a county-wide levy for a specific, authorized purpose, including (1) the basic county mill levy for elementary schools as provided in section 75-3706, (2) the basic special tax for high schools as provided in section 75-4516.1, (3) the county levy for high school transportation as provided in section 75-3414, (4) the county levy for the high school retirement systems as provided in sections 68-603 and 75-2709, and such other county levy as may be required.

2 to 8. * * * [Same as parent volume.]

History: Ap. p. Sec. 1880, Pol. C. 1895; re-en. Sec. 941, Rev. C. 1907; amd. Sec. 2010, Ch. 76, L. 1913; re-en. Sec. 1213, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1929; amd. Sec. 1, Ch. 62, L. 1961; amd. Sec. 11, Ch. 267, L. 1963.

Amendment

The 1963 amendment substituted clauses (1) and (2) in the second sentence of paragraph 1 for clauses reading, "(1) the county ten-mill levy for elementary schools, (2) the county ten-mill levy for high schools"; and added the words "and such other county levy as may be required" at the end of paragraph 1.

CHAPTER 38—EXTRA TAXATION FOR SCHOOL PURPOSES

Section 75-3801. District school taxes—election.

75-3801. (1219) District school taxes—election. (1) Whenever the board of trustees of any school district shall deem it necessary to raise

money by taxation in excess of the levy required to meet its maximum budgets as specified in section 75-1713.1, for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any schoolhouse or houses of such district, for furnishing additional school facilities for said district, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to the maximum budgets hereinbefore provided for, and it shall submit the question of an additional levy to raise said excess amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first.

(2) Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its maximum budgets as specified in section 75-4518.1 for the purpose of maintaining the high schools of said district or the county high school, or building, altering, repairing or enlarging any schoolhouse or houses of such district or county high school, for furnishing additional school facilities for said district, or county high school, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, including the approved addition to its foundation program hereinbefore provided for, and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district. In the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in chapter 130, Laws of 1949 (75-4609).

History: En. Sec. 1, Ch. 93, L. 1917; re-en. Sec. 1219, R. C. M. 1921; amd. Sec. 1, Ch. 120, L. 1925; amd. Sec. 1, Ch. 144, L. 1935; amd. Sec. 12, Ch. 199, L. 1949;

amd. Sec. 1, Ch. 210, L. 1951; amd. Sec. 2, Ch. 247, L. 1953; amd. Sec. 12, Ch. 267, L. 1963.

Amendment

The 1963 amendment substituted "its maximum budgets as specified in section 75-1713.1" near the beginning of subsection (1) for "its foundation program and approved additions thereto within the limitations of thirty per cent (30%) hereinbefore specified"; substituted "in addition to the maximum budgets" later in subsection (1) for "in addition to the five (5) mill levy and the approved addition to its foundation program"; and substituted "its maximum budgets as specified in section 75-4518.1" near the beginning of subsection (2) for "its foundation program and approved additions thereto within the limitation hereinbefore specified."

CHAPTER 41—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS

Section 75-4120. Authority to abolish or to unify.
75-4120.1. Procedure for unification of county high school.
75-4120.2. Appointment and terms of additional trustees after unification—county as high school district.
75-4120.3. Adoption of budget after unification.
75-4121. Petition to abolish county high school to be filed.
75-4122. Commissioners to submit question.
75-4123. Publication of notice and preparation of pollbooks.
75-4124. Further notice required—manner of holding election—ballots.
75-4125. Action by board of county commissioners when election favors abolishing county high school.
75-4126. When election favors retaining high school.
75-4127. Disposition of unexpended funds of county high school after abolishment or unification.
75-4128. Disposition of property of county high school when abolished or unified—inventory—appraisal—compensation of appraisers.
75-4130. Board of county commissioners to sell—manner of sale—execution of deeds.
75-4133. Disposition of taxes levied for county high school but unpaid before abolishment or unification.
75-4134. Liquidation of bonded indebtedness of county high school upon abolishment or unification.
75-4138. School districts may establish high schools and county high schools a branch—transportation.
75-4139. Approval of superintendent of public instruction—how secured.
75-4146. Expenditure of money for transportation of high school pupils.

75-4120. (1262.19) **Authority to abolish or to unify.** Any county in which a county high school has been established may abolish such county high school or unify it with and make it a part of the public school system of the school district in which it is located and dispose of all property belonging thereto in the manner provided in this chapter.

History: En. Sec. 19, Ch. 148, L. 1931; amd. Sec. 1, Ch. 261, L. 1963.

Amendment

The 1963 amendment inserted "or unify it with and make it a part of the public school system of the school district in which it is located."

75-4120.1. Procedure for unification of county high school. A county high school may be unified with and made a part of the school district in which the county high school is located in the following manner: If the board of trustees of the county high school and the board of trustees of the school district in which the county high school is located shall each pass a resolution requesting unification and an election thereon and shall each file copies of the respective resolutions with the county superin-

tendent of schools, or if a petition signed by ten per cent (10 %) of the qualified electors of the high school district where the county high school is located, or of the county if it is not divided into high school districts, is filed with the county superintendent requesting that an election on the question of unification be held, the county superintendent within not less than twenty (20) nor more than thirty (30) days shall cause notice of election to be given by posting and publication. The question shall be submitted to the qualified electors of the high school district where the county high school is located or to the qualified electors of the county if it is not divided into high school districts. The notice shall be posted in three (3) public places in each school district of the high school district, or of the county if it is not divided into high school districts, and at least one (1) voting place shall be provided in each such school district. The notice shall also be published once in a newspaper published in the county and having general circulation therein. The notice shall specify the voting places, the time when the polls shall be open and that the question to be submitted is FOR or AGAINST unification.

If a majority of the votes cast at such election shall be FOR unification the county superintendent shall make an order that unification shall be effective the following July 1.

If a majority of the votes cast at such election shall be AGAINST unification the county superintendent shall so declare.

Persons qualified to vote for school trustees shall be eligible to vote at the election provided for herein and as far as applicable the statutes relating to the election of school trustees shall govern such election.

History: En. Sec. 1, Ch. 37, L. 1965.

Title of Act

An act changing the procedure for unifying a county high school with the school district in which the county high school is located; amending sections 75-1421, 75-4122, 75-4123, 75-4124, 75-4125, and 75-4126, R. C. M. 1947.

75-4120.2. Appointment and terms of additional trustees after unification—county as high school district. If unification is accomplished, immediately after the effective date the county superintendent of schools in those counties which have been divided into high school districts shall appoint additional board of trustee members in the manner provided by section 75-4601, R. C. M. 1947, if the majority of the school districts lying within the high school district so request. If the county has not been divided into high school districts, the county shall immediately upon unification, become a high school district in its entirety in the same manner as if action had been taken under section 75-4602, R. C. M. 1947. Members appointed by the county superintendent of schools shall hold office until the next annual school election when there shall be elected a trustee to replace each appointed member.

History: En. Sec. 2, Ch. 37, L. 1965.

75-4120.3. Adoption of budget after unification. If unification is accomplished, the board of trustees of the district which was unified with the county high school shall adopt a high school budget for the next fiscal

year on the fourth Monday in June preceding the effective date of unification.

History: En. Sec. 3, Ch. 37, L. 1965.

75-4121. (1262.20) **Petition to abolish county high school to be filed.** Between the first day of July and the first day of September in any year in which a general election is held in the state of Montana twenty per centum (20 %) or more, of the qualified registered electors of any county maintaining a county high school who are also assessed in their own names on the assessment books of the county for that year upon real or personal property may file their written petition with the county clerk of the county praying that the county high school be abolished.

History: En. Sec. 20, Ch. 148, L. 1931; amd. Sec. 2, Ch. 261, L. 1963; amd. Sec. 4, Ch. 37, L. 1965.

Amendments

The 1963 amendment inserted "registered" between "qualified" and "electors"; and added "or praying that the county high school be unified with and made a part of the public school system of the school district in which said county high school is located" at the end of the section.

The 1965 amendment deleted the words that had been added at the end of the section by the 1963 amendment.

75-4122. (1262.21) **Commissioners to submit question.** At the first regular monthly meeting of the board of county commissioners of the county immediately following such filing the petition shall be called to the attention of the board by the county clerk; and the board shall immediately direct the submission to the registered voters of the county at the ensuing general election for that year of the question whether the county high school of the county should be abolished.

History: En. Sec. 21, Ch. 148, L. 1931; amd. Sec. 3, Ch. 261, L. 1963; amd. Sec. 5, Ch. 37, L. 1965.

Amendments

The 1963 amendment inserted "of the question appearing in the petition" after "submission"; and deleted from the end of the section the words "of the question whether the county high school of the county should be abolished."

The 1965 amendment deleted the words inserted by the 1963 amendment and restored the words deleted by the 1963 amendment.

75-4123. (1262.22) **Publication of notice and preparation of pollbooks.** The county clerk of the county shall publish a notice of the filing and purpose of the said petition, which notice shall contain the question of abolishing the county high school. The notice shall also state that the said question will be submitted at the ensuing general election. The notice shall be published at least once a week for four successive weeks in some newspaper of general circulation published in the county, and, if there be none, in such newspaper as the board of county commissioners may designate, the first publication of such notice to be made between September 1 and September 15 of the said year. The county clerk of said county shall prepare suitable pollbooks containing the names of all registered electors at the expense of the county.

History: En. Sec. 22, Ch. 148, L. 1931; amd. Sec. 4, Ch. 261, L. 1963; amd. Sec. 6, Ch. 37, L. 1965.

Amendments

The 1963 amendment divided the former text into three sentences; inserted "which notice shall contain the question of either abolishing the county high school

or of unifying the county high school with and making it a part of the public school system of the school district in which it is located" at the end of the first sentence; substituted the second sentence for "and that the question of abolishing the county high school in the county will be submitted at the ensuing general election"; inserted "The notice shall be published" at the beginning of the third sentence; and added the fourth sentence.

The 1965 amendment substituted "abolishing the county high school" at the end of the first sentence for "either abolishing the county high school or of unifying the county high school with and making it a part of the public school system of the school district in which it is located."

75-4124. (1262.23) **Further notice required—manner of holding election—ballots.** Further notice of the submission of the question shall be given, and such question shall be submitted to the registered voters of the county at the ensuing general election in November, and the votes cast thereon canvassed and returns thereof made in the manner provided by law for the election of county officers at that election, subject, however, to the following special requirements:

The votes for or against abolishment of the county high school shall be cast by ballot in substantially the following form.

Abolishment of county high school.

☐ For the abolishment of the county high school.

☐ Against the abolishment of the county high school.

An elector may vote for the question submitted to him for consideration by placing an "X" in the square immediately before the words "For the abolishment of the county high school"; and a ballot so marked and cast shall be counted in favor of abolishing the county high school. An elector may vote against the question submitted to him for consideration by placing an "X" in the square immediately preceding the words "Against the abolishment of the county high school"; and a ballot so marked and cast shall be counted against abolishing the county high school.

History: En. Sec. 23, Ch. 148, L. 1931; amd. Sec. 5, Ch. 261, L. 1963; amd. Sec. 7, Ch. 37, L. 1965.

Amendments

The 1963 amendment substituted for the second paragraph a paragraph reading, "If the question is to abolish the county high school, the votes for or against abolishment of the county high school shall be cast by ballot in substantially the following form under A. But if the question is to unify the county high school and make it a part of the public school system of the school district in which the county high school is located, then a ballot similar to form B shall be used"; inserted, with a designation "A", the caption for the ballot form on abolishment of the county high school; inserted a ballot form B on the question of unification of the county high school; substituted "the question submitted to him for consideration" in the final paragraph for "abolishing the county high school" and "the abolishment of the county high school"; and inserted "(or unification)" or "(or unifying)" after "abolishment" or "abolishing" in four places in the final paragraph.

The 1965 amendment restored the second paragraph to substantially its original form; deleted "A" from the caption for the ballot form on abolishment of the county high school; deleted ballot form B on unification of the county high school; and deleted from the final paragraph the words "(or unification)" and "(or unifying)" that had been inserted by the 1963 amendment.

75-4125. (1262.24) **Action by board of county commissioners when election favors abolishing county high school.** If a majority of all votes cast at such general election upon the question of the abolishment of the county high school shall be in favor of abolishing the same the board of county commissioners of the county at its first regular meeting in December following the election shall make and enter at large upon its minutes

an abstract of the votes so cast and a resolution that in accordance therewith on and after July 1st of the year immediately following the county high school of the county shall be, and is thereby abolished.

History: En. Sec. 24, Ch. 148, L. 1931; amd. Sec. 6, Ch. 261, L. 1963; amd. Sec. 8, Ch. 37, L. 1965.

Amendments

The 1963 amendment substituted "question of the abolishment or the unification of the county high school with and making it a part of the public school system of the school district in which the county high school is located shall be in favor of abolishing or unifying the same" in the first part of the section for "question of the abolishment of the county high school shall be in favor of abolishing the same"; added at the end of the section the words "or, in case of unification, that the county high school shall be and is thereby unified with and made a part of the public school system of the school district in which the county high school is located, and that the board of trustees of said county high school shall be and is thereby dissolved, and that its powers and duties shall be and are thereby assigned to the board of trustees of the school district with which the county high school was unified, provided, that the board of trustees of said school district shall have, and is hereby given the power and authority to prepare and adopt the preliminary high school budget for the ensuing fiscal year beginning on said July 1st"; and made a minor change in phraseology.

The 1965 amendment restored the section to its original form except for a minor change in phraseology.

75-4126. (1262.25) **When election favors retaining high school.** But if a majority of all votes cast at such election shall be against the abolishment of the county high school a similar abstract of the votes shall in like manner be entered by the board of county commissioners at large upon their minutes at its December meeting aforesaid; and no further submission of the question of abolishing the county high school shall be had in that county for at least two (2) years thereafter, provided that if an election against the abolishment of the county high school has been had within any county within two years prior to the enactment of this statute, that the question shall not again be resubmitted for at least two (2) years after the date that this act becomes effective.

History: En. Sec. 25, Ch. 148, L. 1931; amd. Sec. 7, Ch. 261, L. 1963; amd. Sec. 9, Ch. 37, L. 1965.

Amendments

The 1963 amendment inserted "or the unification" and "or unifying" after "abolishment" and "abolishing"; and reduced the waiting period for a new election from four to two years from the previous election or from the effective date of the act.

The 1965 amendment deleted the phrases "or the unification" and "or unifying" that had been inserted by the 1963 amendment.

Effective Date

Section 10 of Ch. 37, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

75-4127. (1262.26) **Disposition of unexpended funds of county high school after abolishment or unification.** When any county high school is abolished pursuant to law all unexpended moneys belonging to such high school shall be applied and paid as follows:

1. To the payment of outstanding warrants issued by the board of trustees of the county high school.

2. To the payment of the interest and principal of outstanding bonds issued for county high school purposes.

3. To the credit of the funds of the school districts of the county which maintain and conduct accredited high school classes, the appor-

tionment among such districts to be made according to the average daily attendance as determined by the county superintendent of schools at such accredited high school classes for the school year immediately next preceding the effective date of the abolishment of the county high school. But if the school district in which the county high school was located shall establish an approved high school, or approved high school classes, for the school year immediately following upon the effective date of the abolishment of the county high school such school district shall share in the distribution of any unexpended balance of the funds of the county high school upon the basis of the average daily attendance at the county high school in approved high school classes during the last school year of its existence. When any county high school is unified pursuant to the provisions of this chapter, all unexpended moneys belonging to such high school, other than funds that were raised for the purpose of paying the interest and principal of outstanding bonds issued for county high school purposes, shall be paid in the following manner:

1. To the payment of the outstanding warrants and current invoices for material and services purchased by the board of trustees of the county high school.

2. Any remainder shall be deposited to the credit of the school district in which the county high school was located to be used in the budget for the operation of the district high school.

History: En. Sec. 26, Ch. 148, L. 1931; amd. Sec. 8, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the final sentence and the two numbered clauses subsidiary thereto.

75-4128. (1262.27) **Disposition of property of county high school when abolished or unified—inventory—appraisal—compensation of appraisers.** When any county high school is abolished all its real and personal property, other than its moneys, shall be disposed of in the following manner: The district court of the county in which such high school was located on application of the board of county commissioners shall appoint three competent persons, residents of the county, to inventory and appraise all such real and personal property of the said county high school. In making such appraisement the appraisers shall take into account ordinary depreciation, and the adaptability or lack of adaptability of the buildings, grounds, and other real estate, and of the various articles of personal property to any special use for which such property may be sold. The appraisers shall be allowed their necessary expenses, including mileage at the rate of ten (10) cents per mile from their respective residences to the place where the property of the county high school is found, and return, expenses and mileage to be paid out of any moneys belonging to the county high school, or, if none, out of the general fund of the county, upon the order of the district court. When any county high school is unified with and made a part of the public school system of the school district in which it is located according to this chapter, all its real and personal property, including all appurtenances and hereditaments, except as otherwise provided for in this chapter, shall become and

remain the property of the school district with which it was unified without an inventory and appraisement.

History: En. Sec. 27, Ch. 148, L. 1931; amd. Sec. 9, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the final sentence.

75-4130. (1262.29) **Board of county commissioners to sell—manner of sale—execution of deeds.** Upon the adoption or approval of the appraisement the board of county commissioners of the county shall proceed to sell all of such property after notice and in the manner provided by law for the sale by the board of other county property; and upon any such sale of all or any portion of such property pursuant to law and the payment to the county treasurer of the purchase price the said board shall be fully authorized and empowered to make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the purchaser or purchasers; provided, that if the county high school was unified with and made a part of the public school system of the school district in which it was located pursuant to the provisions of this chapter, the board of county commissioners of the county shall make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the school district with which the county high school was unified.

History: En. Sec. 29, Ch. 148, L. 1931; amd. Sec. 10, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the proviso at the end of the section.

75-4133. (1262.32) **Disposition of taxes levied for county high school but unpaid before abolishment or unification.** All taxes levied for the support of any county high school which is thereafter abolished before such taxes are collected shall, when collected, be paid over into the fund created by the special high school tax levied in the county, and apportioned and disbursed as a part of such fund, and, if there be no such fund, then into the general school fund of the county, provided, however, that if any county high school is unified, all taxes levied for the county high school shall be paid to the school district for the support of the district high school established by the unification.

History: En. Sec. 32, Ch. 148, L. 1931; amd. Sec. 11, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the proviso at the end of the section.

75-4134. (1262.33) **Liquidation of bonded indebtedness of county high school upon abolishment or unification.** If the funds of any county high school which has been abolished, and the proceeds of the sale of all its property according to law, are not sufficient to pay all the outstanding warrants, bonds and other legal obligations of the said high school, it shall be the duty of the county commissioners and of the board of trustees of the said high school annually to ascertain the amount of such warrants, bonds and other outstanding indebtedness and to make such annual tax levies according to law as may be necessary to pay and retire such warrants, bonds and/or other outstanding obligations, all in the same

manner and by the same means as though the said county high school had not been abolished; and for such purpose and until such indebtedness be fully paid and discharged the board of trustees of the said county high school shall be continued in existence and shall function, and together with the board of commissioners of the county shall exercise and have the same powers for retiring and paying such indebtedness as though the said county high school were still functioning and in existence. When a county high school is unified with and made a part of the public school system of the school district in which it is located, all outstanding bonds shall remain the liability of the county or that portion of the county against which the bonds were originally issued. It shall be the duty of the county commissioners and the board of trustees of the school district with which the county high school was unified to ascertain annually the amount of such bonds and to make such annual tax levies according to law as may be necessary to pay and retire such bonds in full, all in the same manner and by the same means as though the said county high school had not been unified.

History: En. Sec. 33, Ch. 148, L. 1931; amd. Sec. 12, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the second and third sentences.

75-4138. (1262.37) School districts may establish high schools and county high schools a branch—transportation. Whenever the interests of any school district or a county high school require it, the board of trustees of the district or the board of trustees of the county high school, with the approval of the superintendent of public instruction, may establish a high school for the district or a branch of the county high school and make the provisions for its quarters, equipment, and teaching force in the manner provided for in section 75-4139, provided, if any school district acquires the real and all other property of a former county high school by means of unification pursuant to this chapter, the board of trustees of such school district shall have the authority by resolution to establish a district high school using therefor the real and other property of the former county high school without further action or any approval and the high school established shall be the high school of the high school district in which located, if the county has been divided into high school districts.

History: En. Sec. 37, Ch. 148, L. 1931; amd. Sec. 1, Ch. 159, L. 1939; amd. Sec. 1, Ch. 152, L. 1963; amd. Sec. 13, Ch. 261, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 152 and once by Ch. 261. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

Chapter 152, Laws 1963, inserted "or a county high school," "or the board of trustees of the county high school," and "for the district or a branch of the county high school" in the first part of the section; and made a minor change in phraseology.

Chapter 261, Laws 1963, substituted the proviso for two former provisos, for text of which see parent volume.

Repealing Clause

Section 14 of Ch. 261, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 15 of Ch. 261, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 13, 1963.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-4139. (1262.38) **Approval of superintendent of public instruction—how secured.** When the board of trustees of any school district desires to establish a high school, or a county high school desires to establish a branch of the county high school, it shall petition the superintendent of public instruction, prior to June first of the current year for the permission to do so, setting forth in writing the facts regarding the enrollment in the elementary grades, the distance to other high schools, the road conditions, the taxable valuation of the district, the building facilities and such other information as the state superintendent may require. An investigation shall be made thereafter by a designated representative of the superintendent of public instruction and his report on the petition filed with it before the petition is acted upon. The superintendent of public instruction must have passed favorably on any such petition before the high school or branch of the county high school proposed may be established by the district.

When the establishment of a high school or a branch of the county high school has been approved in accordance with the provisions of this section, the county superintendent of schools shall immediately investigate to find the number of students who will probably attend such newly established high school or branch of the county high school. This number of students shall be used as a basis for making out the budget for the first year of operation. He shall then assist the board of trustees of the school district establishing such high school or the trustees of a county high school establishing a branch, in preparing and submitting a budget for the maintenance of such high school or branch of the county high school. Said budget shall, otherwise than specified above, be prepared, submitted, approved and distributed in the same manner as other high school budgets are prepared, submitted, approved and distributed.

History: En. Sec. 38, Ch. 148, L. 1931; amd. Sec. 1, Ch. 9, L. 1933; amd. Sec. 2, Ch. 152, L. 1963.

Amendment

The 1963 amendment inserted "or a county high school desires to establish a branch of the county high school" in the first sentence of the section; inserted "or branch of the county high school" or "or a branch of the county high school" in the last sentence of the first paragraph and in three places in the second paragraph; and inserted "or the trustees of a county high school establishing a branch" in the third sentence of the second paragraph.

Effective Date

Section 3 of Ch. 152, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

75-4146. (1262.44-A) **Expenditure of money for transportation of high school pupils.** Whenever any eligible high school pupil has been authorized to attend a high school situated in a county in another state and which county adjoins the state of Montana, as provided in section 75-4230, the board of trustees of the county high school, if there be a county high school for the county in which the pupil resides, or if there be no such county high school then the board of trustees of the school district in

which such pupil resides, may expend any moneys belonging to the county high school, or school district, as the case may be, for the purpose of either paying for transportation of such pupil from the home of such pupil to the high school in the other state which is to be attended, or for board, rent or tuition for such pupil while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil if permission were given for attending a high school in another district in the county in which the pupil resides in accordance with the provisions of law.

History: En. Sec. 3, Ch. 217, L. 1939; amd. Sec. 1, Ch. 21, L. 1963.

Amendment

The 1963 amendment substituted "the state of Montana" for "the county in which such high school pupil resides" after "adjoins" near the beginning of the section; and, at the end of the section, substituted "provisions of law" for "provisions of section 75-4145."

CHAPTER 42—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION

Section 75-4202. Establishment in districts where county high school is located.
75-4230. Attendance outside of county of pupil's residence—transfer of apportionment.

75-4202. (1262.53) Establishment in districts where county high school is located. A junior high school or junior high schools may be established by the school district in which any county high school is located in the manner provided in section 75-4201, provided that the board of trustees of the county high school already located in the district shall by resolution consent thereto. A junior high school, or junior high schools, may also, in like manner, be established by the county high school, provided that the board of trustees of the school district, in which the county high school is located, shall by resolution consent thereto. In no event, however, shall a junior high school be established unless the question has been submitted to the qualified electors of the district involved, and a majority of the electors vote in favor thereof.

History: En. Sec. 53, Ch. 148, L. 1931; amd. Sec. 1, Ch. 89, L. 1949; amd. Sec. 1, Ch. 262, L. 1965.

Amendment

The 1965 amendment added the last sentence.

75-4230. Attendance outside of county of pupil's residence—transfer of apportionment. The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of another county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion

require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the state of Montana.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupil's residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by three hundred dollars ($300) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred seventy-five dollars ($275) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred fifty dollars ($250) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

The total of the transfer budget shall be subtracted from the receipts from the basic special tax for high schools as provided for in section 75-4516.1 before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the

amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Whenever pupils are inmates of the Montana children's center at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall receive from moneys available for state equalization aid four hundred dollars ($400.00) for each such pupil; provided, however, that this amount of tuition is not considered as a part of regular state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

History: En. Sec. 81, Ch. 148, L. 1931; amd. Sec. 4, Ch. 217, L. 1939; amd. Sec. 1, Ch. 219, L. 1943; amd. Sec. 1, Ch. 146, L. 1949; amd. Sec. 3, Ch. 106, L. 1951; amd. Sec. 1, Ch. 22, L. 1953; amd. Sec. 1, Ch. 70, L. 1959; amd. Sec. 2, Ch. 21, L. 1963; amd. Sec. 1, Ch. 162, L. 1963; amd. Sec. 13, Ch. 267, L. 1963; amd. Sec. 2, Ch. 127, L. 1965.

Compiler's Note

This section was amended three times in 1963, once by Ch. 21, once by Ch. 162, and once by Ch. 267. Chapter 267 included one of the changes made by Ch. 162, but otherwise none of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by all three amendments.

Amendments

Chapter 21, Laws 1963, substituted "another county" for "an adjoining county" after "lives closer to a high school of" near the middle of the first paragraph; and substituted "the state of Montana" for "the county of the student's residence" at the end of the third paragraph.

Chapter 162, Laws 1963, substituted "children's center" for "state orphans' home" in the eighth paragraph; and increased the reimbursement specified in the eighth paragraph from $250 to $400 per pupil.

Chapter 267, Laws 1963, substituted "the basic special tax for high schools as provided for in section 75-4516.1" near the beginning of the sixth paragraph for "the county ten (10) mill levy for high schools"; incorporated in the eighth paragraph the change in the reimbursement rate made by Ch. 162, Laws 1963; substituted "shall receive from moneys available for state equalization aid" in the eighth paragraph for "shall be reimbursed from the state public school equalization fund at the rate of"; and inserted "regular" in the proviso to the first sentence in the eighth paragraph.

The 1965 amendment increased tuition by $50 in each of the three classes of schools mentioned in the fifth paragraph.

75-4231. (1262.83) General powers and duties of boards of trustees.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

CHAPTER 43—DESIGNATION OF HIGH SCHOOLS AS VOCATIONAL TRAINING CENTERS

Section 75-4303. Eligibility and procedure for admission.
75-4304. Attendance of persons residing outside county.

75-4303. Eligibility and procedure for admission. Vocational training centers designated by the state board for vocational education shall admit for training any resident of the state of Montana, between the ages of sixteen (16) and twenty-one (21) years, provided that any such resident of the state, residing out of the county wherein a vocational center is located, shall make application for admission to training on or before the first day of June of the school year preceding the opening of the next school year. Notice of the acceptance or rejection of such applicant shall be given by the local authority of the training center on or before the first of July, following receipt of the application. Notice of the acceptance of the applicant shall be presented to the county superintendent of schools and the board of county commissioners of the applicant's residence on or before the 15th day of July.

History: En. Sec. 3, Ch. 160, L. 1939; amd. Sec. 1, Ch. 77, L. 1963.

Amendment

The 1963 amendment deleted the words "on a nontuition basis" which followed "admit for training" in the first sentence.

75-4304. Attendance of persons residing outside county. When attendance of any eligible person between the ages of sixteen (16) and twenty-one (21) years at a designated vocational training center, outside of the county of his residence, is authorized, as provided in section 75-4303, the board of county commissioners of the county of such residence must forthwith direct the county treasurer to pay from the high school transfer fund to the board of trustees of the school district, high school district or county high school designated as a vocational training center at which attendance has been authorized the sum of two hundred fifty dollars ($250) a year. The names of all applicants entitled to admission to the training center who are residents of the county wherein such center is located, shall be added to the list of those eligible to be counted for high school attendance.

History: En. Sec. 4, Ch. 160, L. 1939; amd. Sec. 2, Ch. 77, L. 1963.

Amendment

The 1963 amendment substituted "two hundred fifty dollars ($250) a year" at the end of the first sentence for "fifty cents (50c) per day for each and every day of attendance at the time of the June apportionment, provided that attendance for less than thirty-five days shall not be counted, and further provided that the total amount apportioned for each attendant for each school year shall not exceed the sum of $90.00."

Repealing Clause

Section 3 of Ch. 77, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 77, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 26, 1963.

CHAPTER 44—COMMUNITY COLLEGE DISTRICTS

Section 75-4413. Property and population requirements for district—corporate powers—exemption from school district law.
75-4414. Supervision by state board of education.
75-4415. Boundaries of district—additional to other districts.
75-4416. Petition for organization of district—election—order establishing district.
75-4417. Election of trustees—districts from which elected—terms of office.
75-4418. Notice of organization election—conduct of election.
75-4419. Trustees' oath of office—officers of board—quorum—vacancies—seal.
75-4420. Trustee elections after organization.
75-4421. Meetings of board—notice—mileage allowance for trustees.
75-4422. Trustees not to have pecuniary interest in district contracts—advertising for bids.
75-4423. Courses of instruction provided—tuition fees.
75-4424. Employment of personnel—retirement of employees and trustees.
75-4425. Participation in foundation program and equalization fund—budgeting—special tax levy.
75-4426. Building construction and repairs—acquisition of land—tax levy—federal and state aid.
75-4427. Acceptance of donations.
75-4428. Disposition of surplus property—contracts for co-operation with school districts.
75-4429. Junior colleges authorized to continue—conversion to community college.
75-4430. Annexation of school districts to junior college or community college district—election.

75-4401 to 75-4412. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 158, L. 1939; Sec. 1, Ch. 173, L. 1953), relating to junior colleges, were repealed by Sec. 20, Ch. 274, Laws 1965.

75-4413. Property and population requirements for district—corporate powers—exemption from school district law. The voters in any area of the state may form a community college district where the area to be formed into such district has an assessed valuation of not less than thirty million dollars ($30,000,000) and has a total of not less than seven hundred (700) pupils regularly enrolled in public and private high schools. The district may consist of a county, two or more contiguous counties, or contiguous parts of two or more counties in this state. When such a district is organized, it shall be a body corporate and a subdivision of the state of Montana and shall be known as "The Community College District of _____, Montana" and, in that name, may sue and be sued, levy and collect taxes within the limitations of this act, and possess the same corporate powers as common school and high school districts in this state, except as herein otherwise provided. Sections 75-1801 to 75-1834, Revised Codes of Montana, 1947, as amended, shall not apply to community college districts organized under the provisions of this act except as provided herein.

History: En. Sec. 1, Ch. 274, L. 1965.

Title of Act

An act providing for the creation and establishment of community college districts; directing state board of education to supervise community colleges and junior colleges; providing for elections to create community college districts; providing for governing board of community college districts and for the election, terms and qualifications of its trustees; providing for powers of board of trustees and powers of community college districts; providing authority for, and financing of, maintenance and operations

and capital improvements of community college districts; providing for instruction to be offered by community and junior colleges; authorizing negotiations with school districts for property and providing for adult education courses and exchange of teachers; providing that present junior colleges may be established as community colleges and community college districts; and providing for annexation of additional areas to community college districts; repealing sections 75-4401, 75-4402, 75-4403, 75-4404, 75-4405, 75-4406, 75-4407, 75-4408, 75-4409, 75-4410, 75-4411, 75-4412, R. C. M. 1947.

75-4414. Supervision by state board of education. (1) Junior college departments or districts formed prior to the effective date of this act and those community college districts formed under the provisions of this act shall be under the supervision of the state board of education.

(2) It shall be the duty of the state board of education to:

(a) Establish the role of the two-year college in the state;

(b) Set up a survey form to be used for local surveys of need and potential for two-year colleges and provide supervision in the conducting of surveys;

(c) Supervise the community college districts formed under the provisions of this act and the junior colleges now in existence and formed prior to the effective date of this act;

(d) Formulate and put into effect, uniform policies as to budgeting, record keeping and student accounting;

(e) Establish uniform minimum entrance requirements and uniform curricular offerings for all community and junior colleges;

(f) Make a continuing study of the junior and community college education in the state; and

(g) Be responsible for the accreditation of each junior college and community college under its supervision. Accreditation shall be conducted annually or as often as deemed advisable and made in a manner consistent with the rules and regulations established and applied uniformly to all junior and community college districts in the state. Standards for accreditation of junior and community colleges shall be formulated with due consideration given to curriculum offerings and entrance requirements of the Montana university system.

History: En. Sec. 2, Ch. 274, L. 1965.

75-4415. Boundaries of district—additional to other districts. The boundaries of any community college district organized under this act shall coincide with the then-existing boundaries of the contiguous common school districts proposed to be included, and such community college district shall be in addition to any other school districts existing in any portion of such area.

History: En. Sec. 3, Ch. 274, L. 1965.

75-4416. Petition for organization of district—election—order establishing district. Whenever there is presented to the state board of education a petition, signed by not less than twenty per centum (20%) of the qualified registered electors residing within each county or part of county within a proposed community college district area, praying that a community college district be organized for the purpose of offering com-

munity college (13th and 14th year) courses, the state board of education shall order an election held within the proposed district of the qualified electors therein to vote on the proposal and to elect trustees, at the next following annual school election. At such election, the proposition shall be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of _____, State of Montana, a community college district for the offering of 13th and 14th year courses, to be known as the Community College District of _____, Montana, under the provisions of Chapter (giving the number of this act [274]), Laws of 1965, as prayed in the petition filed with the State Board of Education at Helena, Montana, on the _____ day of _____, 19—?

☐ For organization
☐ Against organization

The election shall be conducted in the manner provided for the election of trustees in a common school district of the second or third class. Within fifteen (15) days after such election, the results shall be transmitted by those receiving the same under law in each component district to the state board of education, by certificates attesting to the total number of votes cast within each such district on said proposition, the votes cast for and against said proposition and the votes cast for each candidate for trustee, together with the tally sheets attested to by the judges and clerks of election at each polling place within each such district. The proposal to organize the community college district, to carry, must receive a majority of the total number of votes cast thereon and the state superintendent of public instruction, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county or part of a county within the proposed district and shall certify the results to the state board of education. Should the state superintendent of public instruction certificate show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county or part of a county within the proposed district, the state board of education shall make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of county clerk and recorder in each county in which a portion of such new district is situated. If the proposition carries in some county or counties and/or parts of counties but not in all portions of area sought to be included within the district, the board shall determine whether the area in which the proposition carried by a majority vote meets the requirements of section 1 [75-4413] of this act, and if so shall establish the boundaries. If the proposition carries, the board shall also determine which candidates have been elected trustees under section 5 [75-4417] of this act. Should the proposition to organize the district fail to receive a majority of the votes cast thereon above provided, no tabulation shall be made to determine the candidates elected trustees.

History: En. Sec. 4, Ch. 274, L. 1965.

75-4417. Election of trustees—districts from which elected—terms of office. In the organization election seven (7) trustees shall be elected at large, except, that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43 %) and not more than fifty per cent (50 %) of the total school census of the proposed district, as determined by the last school census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder of the proposed college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the total school census of the proposed district then four (4) trustees shall be elected at large from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed college district. If the trustees are elected at large throughout the entire proposed district, the one receiving the greatest number of votes shall be elected for a term of seven (7) years, the one receiving the next greatest number of votes, for a term of six (6) years, the one receiving the next greatest number of votes, for a term of five (5) years, the one receiving the next greatest number of votes for a term of four (4) years, the one receiving the next greatest number of votes for a term of three (3) years, the one receiving the next greatest number of votes for a term of two (2) years and the elected one receiving the least number of votes for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the one who shall serve for seven (7) years, the one who shall serve for six (6) years, the one who shall serve for five (5) years, the one who shall serve for four (4) years, the one who shall serve for three (3) years, the one who shall serve for two (2) years and the one who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of seven (7) years each.

History: En. Sec. 5, Ch. 274, L. 1965.

75-4418. Notice of organization election—conduct of election. Notice of the organization election shall be given by the state board of education by publication in at least one (1) newspaper of general circulation in each county including any portion of the proposed community college district, once a week for three (3) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of election. The election shall be conducted in the same manner, at the same polling places and by the same election officials who are conducting elections on that day in each component school district.

History: En. Sec. 6, Ch. 274, L. 1965.

75-4419. Trustees' oath of office—officers of board—quorum—vacancies—seal. Newly elected members of the board of trustees shall be qualified by taking the oath of office prescribed by article XIX, section 1, of the constitution of Montana. The board shall be organized by the election of a president and vice-president and a secretary, said secretary may be or

may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college is situated. A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the whole board shall vote therefor. Any vacancy occurring in the board shall be filled by appointment by the remaining members of the board, and the persons appointed shall hold office until the next election held by such community college district when a trustee shall be elected for the unexpired term. The board shall keep a common seal with which to attest its official acts.

History: En. Sec. 7, Ch. 274, L. 1965.

75-4420. Trustee elections after organization. After organization, the qualified voters of the community college district shall vote for trustees on the first Saturday in April, and such elections shall be held in the same manner and with elections being held in the component common school districts within the boundaries of such community college district. All costs incident to such community college trustee elections shall be borne by the community college district. Notice of all such elections shall be given by the board of trustees by publication in at least one (1) newspaper of general circulation within each county, at least once a week for two (2) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of election. Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the district from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that district. All candidates for the office of trustee shall file their declarations or [of] candidacy with the secretary of the board of trustees at least thirty (30) days prior to the date of election. If voting machines are not used in a common school district or districts which are within such community college district, then the board of trustees shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be held at the same time, in the same places and shall be conducted by the same officials for elections being held in such common school districts. The community college district shall reimburse to the common school district one-half (½) of the costs of the common school district of the compensation actually paid by said common school district to the judges of such elections. The judges of election in each component school district, shall certify to the board of trustees of the community college district the total number of votes cast for each candidate and the votes cast on all questions submitted within fifteen (15) days after any election. Within forty-eight (48) hours thereafter, at least a majority of the then qualified members of the board of trustees of such community college district shall jointly tabulate the results so received, shall declare and certify the candidates receiving the greatest number of votes for terms of seven (7) years each and until their successor shall have been elected and qualified and shall declare and certify the results of the votes cast on

any question presented at such election. "Qualified voters," under the provisions of this act, shall mean those voters qualified to vote in the school election of the component common school district.

History: En. Sec. 8, Ch. 274, L. 1965.

75-4421. Meetings of board—notice—mileage allowance for trustees. The board of trustees shall hold monthly meetings within the community college district on the third Tuesday of each month or such other day of the month the board might set and may hold special meetings at any time and place which it may direct. The president and secretary of the board may also call special meetings of said board at any time and place, if in their judgment necessity requires it. The secretary of the board shall notify the members of all regular and special meetings. The members of the board shall receive ten cents (10¢) per mile for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

History: En. Sec. 9, Ch. 274, L. 1965.

75-4422. Trustees not to have pecuniary interest in district contracts —advertising for bids. It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the college, or to receive or to accept any compensation or reward for services rendered as trustee, except as herein provided. No board of trustees shall let any contract (except if the amount involved is less than two thousand dollars ($2,000) for building, furnishing, repairing or other work or supplies for the benefit of the district, without first advertising in a newspaper published in each county wherein the area of the district lies for at least two (2) weeks, call for bids to perform such work or furnish such supplies. In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of trustees shall have the right to reject any and all bids.

History: En. Sec. 10, Ch. 274, L. 1965.

75-4423. Courses of instruction provided—tuition fees. A community college district organized under this act shall provide instruction, classes, school or schools for student residents within the community college district; and subject to the approval of the state board of education provide instruction, courses and classes for vocational training within the district in the trades and industries and commercial branches, and for adult education. The board of trustees of such district may in their discretion determine the per capita cost of such courses, file the same with the state board of education and upon approval thereof by the state board of education, shall require of all nondistrict residents who are accepted as pupils, a tuition fee in such sum as may be necessary for maintenance of such course or courses. A different tuition may be established as between nondistrict residents residing within the state of Montana and those residing outside the state of Montana. In addition thereto, such board of

trustees may charge resident students such amounts as it deems necessary to maintain such courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En. Sec. 11, Ch. 274, L. 1965.

75-4424. Employment of personnel—retirement of employees and trustees. The board of trustees shall appoint the employees of the community college, define and assign their powers and duties and fix their compensation.

The board of trustees and teachers of a community college district shall be subject to and receive the benefits of chapter 27 of Title 75 of the Revised Codes of Montana, as amended, and hereafter amended.

History: En. Sec. 12, Ch. 274, L. 1965.

75-4425. Participation in foundation program and equalization fund—budgeting—special tax levy. A community college under this act shall be considered a free public school for budgeting and financial purposes under chapter 36, Title 75 of the Revised Codes of Montana, 1947, as amended, and as hereafter amended. The term "average number belonging" for community colleges shall mean those students enrolled and in attendance, in a community college for a period of not less than thirty (30) days, and carrying a course of study of not less than ten (10) class hours in courses, including vocational courses meeting standards prescribed by the state board of education, during each calendar week. A class hour shall mean not less than fifty (50) minutes of instruction or supervised laboratory training. Each student, enrolled for a period of more than thirty (30) days in any one (1) quarter or semester but less than two (2) complete semesters or three (3) complete quarters, shall entitle the college district to receive proportionate credit based upon the number of weeks the student is enrolled and in attendance bears to the total weeks in the two (2) complete semesters or three (3) quarters. Such calculations shall exclude weeks of regular vacation time.

The moneys coming into the state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the community college in accordance with the schedules provided for high schools under chapter 36, Title 75 of the Revised Codes of Montana, 1947, as amended and as hereafter amended.

The community college district shall be subject to the budgeting laws of a joint high school district or a joint common school district maintaining a high school, in so far as they are applicable, provided, however, the budget of a community college district shall be complete and separate.

Whenever the board of trustees of a community college district shall deem it necessary to raise money for college purposes in addition to its revenues from county and state apportionments, they may proceed in so far as applicable under sections 75-4609 and 75-4610 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 13, Ch. 274, L. 1965.

75-4426. Building construction and repairs—acquisition of land—tax levy—federal and state aid. The board of trustees of any community col-

lege district is hereby vested with the power and authority to build, enlarge, alter, repair or acquire by purchase school buildings and dormitories; furnishing and equipping the same, and purchasing the necessary lands therefor and the board of trustees of any community college district is hereby authorized to levy an additional tax not exceeding ten (10) mills on the dollar of the taxable value of all taxable property within the district for these purposes; provided they shall first be authorized to do so by an election held of the qualified electors of the district who are taxpayers upon property within the community college district, called, noticed and conducted in so far as applicable by sections 75-4609 and 75-4610 of the Revised Codes of Montana, 1947, as amended. The board of trustees of any community college district is hereby authorized to accept funds from the United States or the state of Montana, their instrumentalities or any of their agencies in aid of any one or more of such purposes or in maintaining and operating the college.

History: En. Sec. 14, Ch. 274, L. 1965.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-4427. Acceptance of donations. All community college districts and its boards of trustees thereof on behalf of such districts are hereby authorized and empowered to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the dower, or will of testator, or without any conditions imposed.

History: En. Sec. 15, Ch. 274, L. 1965.

75-4428. Disposition of surplus property—contracts for co-operation with school districts. Whenever there is within any school district any school property that is not required for the use of the school district and such property could be used for purposes of offering education beyond grade twelve or vocational and adult education by community college district, the boards of trustees of any school district is hereby authorized to lease or sell and convey the same to such community college district by negotiation. Any school district within or without the community college district is authorized to contract with a community college district to provide adult education courses for such school district and to exchange teachers.

History: En. Sec. 16, Ch. 274, L. 1965.

75-4429. Junior colleges authorized to continue—conversion to community college. All junior colleges established prior to the effective date of this act shall be under the supervision of the state board of education and shall conform to the scholastic standards established by the board, but no such district may be dissolved except as now provided by law and in no instance because it does not meet the standards for organization established by section 1 [75-4413] of this act. The governing board of any such institution may, by resolution and by transmitting a copy of such resolution to the state superintendent of public instruction, establish a community college district under this act, and name the same without compliance with sections 1 and 4 [75-4413 and 75-4416] of this act.

If such governing board establishes a community college district it shall act as the board of trustees of the community college district until the next general school election held on the first Saturday in April as provided in section 8 [75-4420] herein when all community college district trustees shall be elected as provided in section 5 [75-4417] except that it will not in any way be considered an organization election.

History: En. Sec. 17, Ch. 274, L. 1965.

75-4430. Annexation of school districts to junior college or community college district—election. Whenever the junior or community college district board of trustees shall so resolve or whenever ten per cent (10 %) of the qualified electors of the common school district or districts situate within one (1) county sought to be annexed indicate by a petition, filed with the secretary of the board of trustees of such junior college or community college district, requesting the annexation of a common school district or districts situate within one (1) county to the said district, the board of trustees shall call an election on such annexation within not less than twenty-five (25) days nor more than sixty (60) days from the passage of such resolution or the filing of said petition as the case may be. Notice of such election shall be given in the same manner as an election held to organize a community college district under this act. The election shall be conducted in the same manner, and those eligible to vote shall be the same as an election to organize junior college districts under this act. The board of trustees shall establish such polling places as it may deem fit within the area sought to be annexed.

The question on the ballot shall be as follows:

"Shall school districts _____ be annexed to and become a part of the community college district of _____, Montana?

☐ For Annexation

☐ Against Annexation"

The proposal to annex to carry, must receive a majority of the total votes cast thereon. The judges of the election shall within five (5) days after said election transmit the pollbooks, ballots and tally lists to the board of trustees of said community college district who shall canvass the vote and declare the results of the election and shall cause, if the annexation question carried, a certified copy of their canvassing resolution to be filed in the office of the county clerk and recorder of the county containing area to be annexed and upon such filing the area to be annexed shall then become a part of the community college district.

History: En. Sec. 18, Ch. 274, L. 1965.

Separability Clause

Section 19 of Ch. 274, Laws 1965 read "If any section, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 20 of Ch. 274, Laws 1965 read "Sections 75-4401 through 75-4412, R. C. M. 1947, are repealed."

CHAPTER 45—HIGH SCHOOL BUDGET ACT

Section 75-4516.1. Levy of taxes.
75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program.
75-4521. High school budgets.

75-4524. Emergency warrants.
75-4525. Tax levy to pay emergency warrants.

75-4507 to 75-4510. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 133, L. 1945), constituting temporary and obsolete authority for special increases in high school budgets, were repealed by Sec. 16, Ch. 267, Laws 1963.

75-4516.1. Levy of taxes. (1) Basic high school levy. It shall be the duty of the county commissioners of each county in the state to levy an annual basic special tax for high schools of fourteen (14) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes and which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a basic levy of less than fourteen (14) mills should be sufficient to meet the total of the approved budgets of all school districts and county high schools within the county, then such lesser basic levy shall be made.

No county levying less than the adjusted basic high school levy shall receive any apportionment of state equalization aid.

(2) Additional high school levy. The county commissioners shall, if necessary, levy an additional tax in such number of mills on the taxable value of all taxable property within the county as shall be required to provide the foundation program for all school districts and county high schools within the county. The county superintendent shall apportion the proceeds of such additional tax levy to each school district and county high school within the county after apportionment of the basic special tax for high schools as provided in section 75-3618 and the state equalization aid as provided in section 75-3619.

(3) Permissive high school levy. If the revenues for the operation and maintenance of any high school, including the amount apportionable from said basic special tax for high schools and the amount, if any, produced by said additional high school tax, shall be less than the foundation program of such high school and the approved additions thereto included in its budget, within the limitations hereinbefore specified, it shall be the further duty of the board of county commissioners to fix and levy a tax, in such number of mills as will produce the amount shown by the final budget to be raised by tax levy plus federal reimbursements in lieu of taxes, which tax shall, in the case of a county high school not located within a building district, be levied upon all property in the county, excepting the property of any district supporting a district high school, and shall, in the case of a county high school located within a high school building district, be levied upon all property in such building district and which tax shall, in the case of a district high school not located within a building district, be levied upon all property within the school district, and shall, in the case of a district high school located within a building district, be levied upon all property in such building district, provided, however, that such last mentioned additional tax shall not, in any event, be used to raise funds in excess of the maximum budgets as specified in sec-

tion 75-4518.1 when considered with all other sources of revenues, unless approved by a vote of the taxpaying electors.

History: En. Sec. 15, Ch. 199, L. 1949; amd. Sec. 4, Ch. 208, L. 1951; amd. Sec. 1, Ch. 202, L. 1953; amd. Sec. 1, Ch. 246, L. 1961; amd. Sec. 14, Ch. 267, L. 1963; amd. Sec. 6, Ch. 198, L. 1965.

Amendments

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

The 1965 amendment substituted the first paragraph of subsection (1) for paragraphs reading, "On or before the first day of August in each year, the state superintendent of public instruction shall compute and determine the sum of money which, when added to the moneys available for the state equalization aid shall provide seventy-five per cent (75%) of the maximum high school budgets for all high schools as set forth in sections 75-4518.1 and 75-3612, plus the amount of high school tuition. Such information shall be given to the state board of equalization who shall compute and determine the number of mills of a tax (herein called the basic high school tax) on the taxable value of all property within all the counties of the state which is calculated to produce the aforesaid sum of money. If a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets of all school districts within one or more counties, the state board of equalization shall recompute the basic high school tax to be levied in the remaining counties, excluding in the computations the amount of the foundation programs in the county or counties requiring a lesser levy, thus determining as the adjusted basic high school tax the number of mills required to produce the sum of money which, when added to all the moneys available for state equalization aid to be distributed to all high schools except those which as hereinafter provided are not entitled to apportionment of state equalization aid, shall equal the total of the foundation programs of all high schools except those not entitled to apportionment of state equalization aid. In no event shall the adjusted basic high school tax exceed fifteen (15) mills. In addition to the provisions for the support of the high schools hereinbefore provided, it shall be the duty of the board of county commissioners of each county in the state to levy on the taxable valuation of all taxable property in the county the number of mills determined by the board of equalization as the adjusted basic high school tax, except that the board in any county in which a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets for all high schools within the county shall levy such lesser number of mills. The levy in each county shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, and the tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected"; and substituted "state equalization aid" for "state public school equalization funds" near the end of subsection (2).

75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program. If the total amount of the proposed general fund expenses in the preliminary budget of any district or county high school shall exceed the foundation program thereof, the budget board shall, in the manner provided by section 75-4518, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district or county high school shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the allowance of such excess expense over the foundation program shall not in any manner increase the amounts of state equalization aid to be apportioned hereunder; and provided that, except in the case of the existence of the emergencies specified in section 75-4521, the entire amount of such additional expense over the foundation program to be included in any high school budget including any reserve fund, not

to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year, plus the foundation program shall not be greater than the maximum amounts in accordance with the following schedules, provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

High Schools

(1) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be twenty-seven thousand thirty dollars ($27,030.00).

(2) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum eleven hundred twenty-six dollars ($1,126.00) shall be decreased at the rate of seven dollars and forty-two cents ($7.42) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand seven dollars ($1,007.00) shall be decreased at the rate of five dollars and three cents ($5.03) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of seven hundred four dollars and ninety cents ($704.90) shall be decreased at the rate of one dollar and sixty-four cents ($1.64) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of five hundred forty dollars and sixty cents ($540.60) shall be decreased by thirty-seven cents ($0.37) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of five hundred three dollars and fifty cents ($503.50) shall be decreased at the rate of ten cents ($0.10) until the ANB shall have reached six hundred (600) pupils. Schools having an ANB in excess of six hundred (600) pupils shall receive four hundred seventy-four dollars and eighty-eight cents ($474.88) per pupil.

The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount for the foundation program and the maximum program only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.

History: En. Sec. 14, Ch. 199, L. 1949; amd. Sec. 3, Ch. 208, L. 1951; amd. Sec. 15, Ch. 267, L. 1963; amd. Sec. 7, Ch. 198, L. 1965.

Amendments

The 1963 amendment substituted "of state equalization aid to be apportioned hereunder" for "to be apportioned hereunder from the state public school equalization fund" immediately before the first proviso; inserted "plus the foundation program" after "July 1 to November 30 of the next succeeding year" near the end of the first paragraph; substituted "the maximum amounts in accordance with the following schedules" near the end of the first paragraph for "thirty per cent (30%)

of the foundation program of any high school, having an ANB of 100 or less pupils, and shall not be greater than twenty-five per cent (25%) of the foundation program of any high school having an ANB of more than 100 pupils"; added the final proviso to the first paragraph; and added everything after the first paragraph.

The 1965 amendment increased the maximums specified in paragraph (1) from $25,500 to $27,030, in the first sentence of paragraph (2) from $1,062 to $1,126, in the second sentence of paragraph (2) from $950 to $1,007, in the third sentence of paragraph (2) from $665 to $704.90, in the fourth sentence of paragraph (2) from $510 to $540.60, in the fifth sentence of paragraph (2) from $475 to $503.50, and in the sixth sentence of paragraph (2) from $448 to $474.88; increased the rates of decrease specified in paragraph (2) from $7.00 to $7.42 in the first sentence, from $4.75 to $5.03 in the second sentence, from $1.55 to $1.64 in the third sentence, from 35c to 37c in the fourth sentence, and from 9c to 10c in the fifth sentence; and deleted a former concluding paragraph which read: "On or before January 1 of odd-numbered years, the state superintendent of public instruction shall transmit to the legislative assembly of the state of Montana a revised schedule for secondary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for each classification of secondary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom."

Repealing Clauses

Section 16 of Ch. 267, Laws 1963 read "Sections 75-4507, 75-4508, 75-4509, and 75-4510 are repealed."

Section 17 of Ch. 267, Laws 1963 and Sec. 8 of Ch. 198, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 18 of Ch. 267, Laws 1963 read "This act shall be in full force and effect from and after the fifteenth day of March, 1963."

Section 9 of Ch. 198, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

75-4521. (1263.16) **High school budgets.** (1) Whenever the board of trustees of a county high school or the board of trustees of a school district maintaining a district high school or schools, at any time after December 31st of any school year, shall deem that an emergency exists by reason of an increase in the enrollment and attendance over that of the immediately preceding school year over and beyond the extent which such increase might reasonably have been anticipated at the time of the adoption of the budget for the then current school year, and that because of such increase in enrollment and attendance the budget approved and adopted for any or all of the regularly budgeted funds of the high school for the then current school year does not provide sufficient funds to properly maintain and support such school or schools during the whole of the then current school year; or shall, at any time during a school year, deem that an emergency exists because of the destruction of any school property necessary to the maintenance of school, or its impairment by fire, flood, storm, riot, insurrection, or other act of God, to such an extent as to render it unfit or prevent its use for the school purposes for which theretofore used; or because of the entering by a court of competent jurisdiction of a judgment for damages against the district, or the enactment of legislation, after the adoption of the final budget, requiring expenditures not contemplated therein, such board of trustees by unanimous vote of all members of the board present at any meeting, the time and place of holding which all of the trustees shall have had reasonable notice, may adopt and enter upon their minutes a resolution, stating the facts constituting the emergency, the estimated amount of money required to

meet such emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such current school year.

Whenever such board of trustees shall deem that an emergency exists for any reason other than those reasons specified above, such board may petition the state superintendent of public instruction for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the high school budget or budgets affected by the emergency, the estimated amount of money required to meet such emergency for each affected budget, the anticipated source or sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction. Such petition shall be signed by all of the members of the board of trustees.

The state superintendent of public instruction shall have the power to approve or disapprove such petition. If such petition be approved, the board of trustees may proceed to adopt a resolution of emergency, and may subsequently take all other steps prescribed for meeting an emergency situation due to any of the causes specified above. Approval of such petition by the superintendent of public instruction shall merely authorize the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve such board of trustees of the necessity of complying with the requirements for proceeding according to the provisions of this section and all other laws pertaining to emergency budgets. Approval of such petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency.

(2) to (4). * * * [Same as parent volume.]

(5) The board of trustees may adopt an emergency budget for any or all of the budgeted funds of the high school, for which fund or funds a regular budget has been approved and adopted for the current year in accordance with the provisions of section 75-4517.

(6) Whenever the board of trustees shall prepare an emergency budget for the transportation fund, such emergency budget shall be so itemized as to show the amount appropriated therein, separately for bus transportation and for payments to parents or guardians in lieu of bus transportation. The board of trustees shall attach to such emergency transportation budget a copy of each transportation contract connected with the emergency, such contracts to be prepared and executed in accordance with the provisions of section 75-3405.

(7) Whenever the board of trustees shall prepare an emergency budget for the general fund or the transportation fund, or both, due to increased enrollment, such board of trustees may make application to the state superintendent of public instruction for increased payment from the state public school equalization fund for the foundation program, or for state transportation reimbursement, or both. The state superintendent of public instruction shall prepare and publish rules and regulations for such application. The state superintendent of public instruction shall consider all applications for increased state aid made in accordance with the provisions of this act, and shall determine the amount of increase, if any, which shall be made in the payment of funds from the state public school

equalization fund for the foundation program, or for state transportation reimbursement, or both, on account of any emergency budget due to increased enrollment. The superintendent of public instruction shall notify the board of trustees of the approval or disapproval of any application for increase in payment of state funds, and in the event of approval the budget or budgets to which such increased payment shall be applied, and the amount or amounts thereof. The board of trustees shall attach a copy of such notice of approval or disapproval to the preliminary emergency budget.

(8) Three copies of the emergency budget shall be furnished the county superintendent of schools and such county superintendent must lay one copy thereof before the board of county commissioners, which constitutes the board of school budget supervisors for the county, at the next regular meeting of such board. Such board shall have the power to make such changes in such budget, if any, as it may deem proper and necessary, and shall then approve such budget, either as adopted by the board of school trustees, or as changed by the board of county commissioners.

History: En. Sec. 16, Ch. 178, L. 1933; amd. Sec. 1, Ch. 192, L. 1943; amd. Sec. 1, Ch. 135, L. 1945; amd. Sec. 4, Ch. 147, L. 1965.

Amendment

The 1965 amendment inserted "for any or all of the regularly budgeted funds of the high school" after "the budget approved and adopted" in the first clause of the first paragraph of subsection (1); added the second and third paragraphs to subsection (1); inserted new subsections (5), (6), and (7); redesignated former subsection (5) as subsection (8); and substituted "changed" for "changes" near the end of said subsection (8).

75-4524. Emergency warrants. After the approval of such emergency budgets, if the budget is to provide additional funds for the maintenance and support of the high school or schools, whenever the amount appropriated for any such item in the annual high school budget for such current school year has been fully used and such appropriation is exhausted, expenditures made thereafter shall be made by emergency warrants against the amount appropriated in the emergency budget, which emergency warrants shall be issued in the same manner and form and subject to the same conditions and provisions as set out in section 75-4531, except that on each thereof shall be distinctly endorsed "COUNTY HIGH SCHOOL EMERGENCY WARRANT" or "HIGH SCHOOL WARRANT SCHOOL DISTRICT NO. _____." After deducting from the amount of money standing to the credit of the fund of the high school for which the emergency budget was adopted the amount required to meet and take care of all unexpended appropriations in the annual budget for that fund for the current school year and after deducting the amount required for reserve, if any, provided in such budget for the following school year, if any balance remains in that fund the same shall be used to pay such emergency warrants issued against that fund, in the order in which the same are presented for payment.

History: En. Sec. 4, Ch. 135, L. 1945; amd. Sec. 5, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "the fund of the high school for which the emergency budget was adopted" for "the

general fund of the county high school or the general fund of the district high school as the case may be" near the beginning of the final sentence; inserted "for that fund" after "all unexpended appropriations in the annual budget" in the final sentence; substituted "after deducting the amount required for reserve, if any" in the final sentence for "reserve"; inserted "in that fund" after "if any balance remains" in the final sentence; and inserted "issued against that fund" after "used to pay such emergency warrants" in the final sentence.

75-4525. Tax levy to pay emergency warrants. The county treasurer shall, not later than the first Monday in August of the following school year, make out a statement for such county high school or school district showing the total amount of such emergency warrants issued then outstanding against any fund or funds, and the amount of money, if any, on hand in the said fund or funds of the high school applicable to the payment thereof, and the amount or amounts for the payment of which a special tax levy or tax levies should be made, and deliver the same to the board of county commissioners. For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall, on the second Monday in August, make and fix a levy against the taxable property designated for the support of the high school which will raise sufficient funds to pay such outstanding emergency warrants, with interest thereon, and the county treasurer shall, when collected, place the proceeds of each levy in a special fund and use the same to pay such outstanding emergency warrants with interest thereon as may be obligations against such fund. If after all such emergency warrants have been paid any amount remains in any such special fund it shall be, by such county treasurer, transferred to the comparable regular fund of the county high school or district high school.

History: En. Sec. 5, Ch. 135, L. 1945; amd. Sec. 6, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "against any fund or funds" for "and unpaid" after "emergency warrants then outstanding" in the first sentence; inserted "in the said fund or funds of the high school" before "applicable to the payment thereof" in the first sentence; inserted "or amounts" after "amount" and "or tax levies" after "special tax levy" in the latter part of the first sentence; substituted "For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall" at the beginning of the second sentence for "Such board shall"; substituted "designated for the support of the high school" for "of the county in the case of a county high school, or against the taxable property in the school district if a district high school" after "taxable property" in the second sentence; substituted "the proceeds of each levy" for "the same" in the latter part of the second sentence; inserted "any" before "such special fund" in the first part of the third sentence; and substituted "the comparable regular fund of the county high school or district high school" at the end of the section for "the general fund of the county high school or to the high school fund of the district high school."

Repealing Clause

Section 7 of Ch. 147, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 46—HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings—temporary relocation of schoolhouse.
75-4607. Alteration of boundaries—redivision—limitation.
75-4612. Joint districts authorized—procedure for establishment.

75-4613. General laws governing joint districts.
75-4614. Bonded indebtedness of territory incorporated into joint district.

75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings—temporary relocation of schoolhouse. In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request, such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class or two (2) in districts of the third class.

(a) Following the determination of the number of additional board members to be elected, the county superintendent of schools shall district the territory of the high school district, excluding the common school district wherein the high school is located, into a number of trustee nominating districts equal to the number of additional board members to be elected, and each trustee nominating district so established shall be entitled to one (1) member on the board of trustees of the high school.

The election of the additional trustees shall be held on the first Saturday in April of every year to fill the expired terms of such additional trustees, and the term of office of such additional trustees after the first election of such trustees shall be for three (3) years.

The additional trustees so elected shall be residents of the respective trustee nominating districts established by the county superintendent of schools, and shall meet the general qualifications for school district trustees provided by section 75-1601, Revised Codes of Montana, 1947.

At the first election the additional trustees elected from the trustee nominating districts established by the county superintendent of schools, if there be more than one, shall cast lots to determine the length of time each shall hold office. If there is one (1) additional trustee, he shall hold office for three (3) years. If there are two (2) additional trustees, one shall hold office for three (3) years and one for two (2) years. If there are three (3) additional trustees, one shall hold office for three (3) years, one for two (2) years and one for one (1) year. If there are four (4) additional trustees, two shall hold office for three (3) years, one for two (2) years and one for one (1) year.

The procedure for calling and holding elections, and for the assumption of office, for the school district wherein the high school is located shall govern the election of the additional trustees herein provided for.

At least twenty (20) days preceding the election, any ten (10) electors of a trustee nominating district established as provided for in this act, who are qualified to vote in the election for such additional trustee, shall file with the district clerk of the school district wherein the high school is located the nomination of any qualified person to be a candidate for such trustee from such nominating district. Ballots for the election of such additional trustees shall be prepared in the same form and manner as ballots are prepared for other trustees, providing that such ballots for additional trustees shall show clearly the trustee nominating district from which each nominee is a candidate.

Any qualified elector of a nominating district, excluding the district where the high school is located, may vote for the additional trustees so nominated, at the time and place of the annual election of school trustees in the common school district in which he is entitled to vote, provided that each elector may vote only for such additional trustee from the trustee nominating district in which he is a qualified elector.

A vacancy in the office of additional trustee shall be filled by appointment by the county superintendent of schools; provided, that such appointment shall be subject to confirmation by a majority of the remaining members of the high school district board including the additional members. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a trustee from the same nominating district for the unexpired term.

(b). * * * [Same as parent volume.]

(c) When the board of trustees of a high school district, who have qualified for their positions as such board of trustees under the provisions herein provided, shall find it necessary to temporarily move the site of the schoolhouse to another common school district within the high school district due to the destruction of the school building by fire, flood, storm, riot, insurrection or other act of God, such board of trustees shall continue to hold office for one year after such schoolhouse relocation unless the schoolhouse is moved back to the common school district where it was originally located.

History: En. Sec. 1, Ch. 275, L. 1947; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 67, L. 1957; amd. Sec. 1, Ch. 167, L. 1959; amd. Sec. 1, Ch. 222, L. 1963; amd. Sec. 1, Ch. 166, L. 1965; amd. Sec. 1, Ch. 214, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 166 and once by Ch. 214. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

The 1963 amendment made a minor change in punctuation in the first paragraph; and completely rewrote subdivision (a), for previous text of which see parent volume.

Chapter 166, Laws of 1965, added subdivision (c).

Chapter 214, Laws of 1965, substituted "a" for "any" before "trustee nominating district" near the beginning of the sixth paragraph of subdivision (a) and again before "nominating district" near the beginning of the seventh paragraph of subdivision (a); and substituted "only for such additional trustee from the trustee nominating district in which he is a qualified elector" for "for no more than one such additional trustee from each

trustee nominating district" at the end of the seventh paragraph of subdivision (a).

Repealing Clause

Section 2 of Ch. 222, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 166, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

75-4607. Alteration of boundaries — redivision — limitation. In any county which has been divided into high school building districts, at the request of any high school board of trustees, the commission, provided for in section 75-4602, may, in accord with the procedure provided in said section, alter the boundaries of said districts or redivide the county into a different number of high school districts, provided that such alteration or redivision may not be done within one (1) year from the original division or the last alteration of boundaries and last redivision.

History: En. Sec. 1, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953; amd. Sec. 1, Ch. 140, L. 1965.

Amendment

The 1965 amendment reduced the period set forth in the proviso at the end of the section from three years to one year.

Effective Date

Section 2 of Ch. 140, Laws 1965 read "This act is effective April 1, 1965."

75-4612. Joint districts authorized—procedure for establishment. In addition to the provisions for the formation of high school districts authorized by section 75-4602, R. C. M. 1947, a high school joint district may be formed in accordance with the provisions of this act.

(a) Definitions. For the purposes of this act:

(1) An elementary joint district is a school district consisting of territory lying partly in one county and partly in another;

(2) A high school district is territory lying wholly within one county, created in accordance with the provisions of section 75-4602, R. C. M. 1947;

(3) A high school joint district is territory lying partly in one county and partly in another, designated a high school joint district in accordance with the provisions of this act;

(4) County L is a county in which the school operated by an elementary joint district is located;

(5) County NL is a county in which the school operated by an elementary joint district is not located.

(b) Procedure for formation of high school joint district:

(1) The action to form a high school joint district may be initiated by a majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in an elementary joint district in the whole of the territory of such joint district lying in County NL. Such majority shall present a petition, in writing, to the county superintendent of schools of County NL, asking that the whole of the territory of the elementary joint district in which they reside in County NL be joined to that high school district in County L which includes the territory of the same elementary joint district lying in County L, to form a high school joint district.

(2) The petition shall describe the territory in County NL proposed to be joined to the high school district in County L, and shall also state the reason for desiring such change, and the number of children of high school age, if any, residing in such territory.

(3) The county superintendent of schools of County NL shall file said petition in his office immediately on receipt thereof, and shall give notice to the parties interested by posting notices at least ten (10) days prior to the time appointed for considering said petition, one (1) of which shall be in a public place in the territory in County NL proposed to be joined to the high school district in County L, and one (1) on the door of each high school in County NL which would be affected by the proposed change by reason of reduction of the territory designated for the support of such high school. At the time stated in said notice for the consideration of such petition, which shall not be less than ten (10) days nor more than thirty (30) days after the date of filing such petition, the county superintendent shall proceed to hear such petition.

(4) The county superintendent shall either grant or deny such petition based on evidence received. If such petition is granted, the county superintendent shall make an order fixing the boundaries of the high school joint district so formed. Subject to the provisions of paragraph (5) of this section, such order shall be final, unless an appeal be taken to the board of county commissioners of County NL within thirty (30) days thereafter, and upon hearing thereof the decision of said board shall be final, provided however that the right of appeal to the district court is reserved. No petition shall be granted when an operating high school exists in County NL within three (3) miles of any point of the territory described in the petition. No petition shall be denied solely because the territory described in the petition lies within the boundaries of a high school district in County NL, provided, however that if the removal of such territory from such high school district would reduce the taxable valuation of such high school district to less than seven hundred fifty thousand dollars ($750,000) the petition shall be denied.

(5) Copies of the order fixing the boundaries of the high school joint district shall be transmitted by the county superintendent of County NL to the county superintendent of County L and to the board of trustees of the affected high school district in County L, who within thirty (30) days from the receipt thereof shall act to approve or disapprove such order. Before the order will become effective, approval must be given by such county superintendent and by such board of trustees.

History: En. Sec. 1, Ch. 211, L. 1965.

Title of Act

An act providing for formation and control of high school joint districts in adjacent counties, and providing procedures for creation thereof.

75-4613. General laws governing joint districts. High school joint districts created hereunder shall be governed by the general school laws of the state.

History: En. Sec. 2, Ch. 211, L. 1965.

75-4614. Bonded indebtedness of territory incorporated into joint district. Bonded indebtedness of any territory affected by the provisions of

this act shall remain the indebtedness and obligation of the original territory against which such bonds were issued and shall be paid for out of levies made against said original territory.

History: En. Sec. 3, Ch. 211, L. 1965. Effective Date

Section 4 of Ch. 211, Laws 1965 read "This act is effective April 1, 1965."

CHAPTER 48—SCHOOL LUNCH PROGRAM

Section 75-4802. Expenditure of federal funds.

75-4802. Expenditure of federal funds. The superintendent of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by act of Congress and apportioned to the state for use in connection with school lunch programs, under the "National School Lunch Act," approved June 4, 1946 (Public Law 396, 79th Congress, Chapter 281, 2nd Session), and any amendments thereto. The superintendent of public instruction shall deposit all such funds received from the federal government with the treasurer of the state who shall deposit them in the federal and private grant clearance fund and make disbursements therefrom upon the direction of the superintendent of public instruction.

History: En. Sec. 2, Ch. 282, L. 1947; amd. Sec. 65, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "in a special account" after the words "from the federal government" in the second sentence; and inserted "deposit them in the federal and private grant clearance fund and" in the second sentence.

CHAPTER 50—EDUCATION CLASSES FOR MENTALLY AND PHYSICALLY HANDICAPPED CHILDREN

Section 75-5001. Special education—mentally retarded children—physically handicapped children.

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation.

75-5001. Special education—mentally retarded children—physically handicapped children. Within the meaning of this act special education is that type of education requiring special facilities or instruction because of physical or mental deviation from the average on the part of some children. These handicapped are defined as follows:

(1) Mentally retarded children are children who are not capable of profiting from the general educational program of the public schools. These children may be considered in three groups as follows: (a) Educable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seven-year-old. (b) Trainable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old and who,

for entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands. (c) Custodial mentally retarded. Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication. The public schools are to assume responsibility for the educable group, and may assume responsibility for the trainable group.

(2). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 206, L. 1955; amd. Sec. 1, Ch. 243, L. 1963.

Amendment

The 1963 amendment substituted "mentally retarded" for "mentally handicapped" throughout paragraph (1); deleted "handicapped" after "educable" in the final sentence of paragraph (1); and added the words "and may assume responsibility for the trainable group" at the end of paragraph (1).

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent — reimbursement by state — computation. The board of trustees, responsible for the operation of any public school when it appears that there are not less than ten (10) educable mentally retarded or not less than ten (10) physically handicapped children in the district, must maintain at least one special class for educable mentally retarded children or at least one special class for physically handicapped children, (and may provide classes for the trainable mentally retarded children.) In lieu of providing such special classes the board of trustees may arrange to use the services of such approved mentally retarded or physically handicapped children's classes as may exist and may provide transportation services from home to school and return for all handicapped children enrolled in a state-approved special education program of such ages as it deems wise; provided, that the local board has the right to exclude persons of severe delinquent behavior. The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees but shall be the responsibility of the state superintendent of public instruction in co-operation with appropriate medical, psychiatric and psychological advice. Two (2) or more districts may combine to provide such educational facilities.

Reimbursements on the part of the state for in-school programs approved by the state superintendent of public instruction shall be computed on the basis of forty-five (45) in average number belonging. For other special education programs approved by the state superintendent of public instruction, including speech therapy, home or hospital tutoring, school-to-home telephone communication, or other individual programs, the ANB shall be computed according to a schedule prepared by the state superintendent of public instruction on the basis of the time required and the degree of special education provided; in such cases the ANB shall not exceed three (3) for each exceptional child enrolled in such program. Transportation reimbursements shall be made on a schedule arrived at by the state superintendent of public instruction, and such expenditures shall be added to the transportation budget of the district. The state shall reimburse two-thirds of such approved transportation and the

county shall reimburse the remainder of such approved transportation according to said schedule.

Whenever a new special education class or program, to be offered for the first time in the ensuing year, has been approved by the state superintendent of public instruction prior to the adoption of the preliminary budget, the board of trustees may include in the ANB for the budget a number anticipated to be the ANB eligible for special education computation in the ensuing year, subject to the approval of the state superintendent of public instruction.

Any child who is mentally retarded, or physically handicapped, or both, who is enrolled in a state-approved elementary school special education program which is maintained by a district other than the district in which such child resides, shall be included in the computation of average number belonging to the district maintaining the special education program, according to the provisions herein. The district in which such child resides shall pay to the district where such child attends an amount of tuition based on two times the tuition rates established in section 75-1630, and such payment shall be made in the manner prescribed by section 75-1630.

Any such child who is enrolled in a state-approved high school special education program which is maintained by a high school located in a county other than the county in which such child resides, shall be included in the computation of the average number belonging to the high school maintaining the special education program, according to the provisions herein. The county in which such child resides shall pay to the high school where such child attends an amount of tuition based on two times the tuition rates established in section 75-4230, and such payment shall be made in the manner prescribed by section 75-4230.

When children are sent to an institution supported solely by funds of the state of Montana the home district or county will not be required to pay tuition for such child.

History: En. Sec. 3, Ch. 206, L. 1955; amd. Sec. 1, Ch. 108, L. 1959; amd. Sec. 1, Ch. 41, L. 1961; amd. Sec. 2, Ch. 243, L. 1963; amd. Sec. 1, Ch. 96, L. 1965; amd. Sec. 1, Ch. 142, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 96 and once by Ch. 142. Since the two amendments do not appear in conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

The 1963 amendment inserted "(and may provide classes for the trainable mentally retarded children,)" in the first sentence of the first paragraph.

Chapter 96, Laws of 1965, substituted "The board of trustees, responsible for the operation of any public school" at the beginning of the section for "The board of trustees in each school district"; inserted "not less than (10)" before "physically handicapped children" in the first sentence of the first paragraph; substituted "at least one special class" for "special classes" before "for educable mentally retarded children" in the first sentence of the first paragraph; inserted "at least one special class" before "for physically handicapped children" near the end of the present first sentence of the first paragraph; divided the former first sentence of the first paragraph into two sentences; inserted "In lieu of providing such special classes the board of trustees" at the beginning of the present second sentence of the first paragraph; deleted "within the state" after "as may exist" in the present second sentence of the first paragraph; substituted "and" for "or" before "may provide transportation services" in the present second sentence of the first paragraph; deleted "low intelligence or" before "severe delinquent behavior" in the proviso to the present second sentence of

the first paragraph; deleted "listed above" at the end of the present third sentence of the first paragraph; substituted the first two sentences of the second paragraph for "Reimbursements on the part of the state for such programs shall be computed on the basis of counting each such mentally retarded child in such special classes as three (3) in average number belonging, and each physically handicapped child according to a schedule to be prepared by the state superintendent of public instruction, but in no case shall it be over three (3) average number belonging for each such child, prorated according to time and number in these special classes, or in home tutoring"; and inserted the present third paragraph.

Chapter 142, Laws of 1965, inserted "two times" before "the tuition rate" in the last sentence of the present fourth paragraph and in the last sentence of the present fifth paragraph.

Effective Dates

Section 3 of Ch. 243, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Section 2 of Ch. 96, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 27, 1965.

CHAPTER 51—FEDERAL AID

Section 75-5101. Federal funds—authority to accept—expenditure of funds.

75-5101. Federal funds—authority to accept—expenditure of funds. The governor of the state of Montana and the superintendent of public instruction of the state of Montana are hereby authorized on behalf of the state of Montana to request and accept such funds as are now or will be made available under any act of Congress of the United States, or other public school building construction and/or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Said moneys shall be deposited by the governor and superintendent of public instruction with the treasurer of the state of Montana, and are hereby appropriated and made available to the superintendent of public instruction. All said moneys shall be expended for the purpose of public school building construction and/or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such expenditures shall be made under the supervision and discretion of the superintendent of public instruction. Any balance in the account in which said moneys are maintained shall not lapse at any time, but shall be continuously available to the superintendent of public instruction for the expenditure consistent with this act and acts of the federal government.

History: En. Sec. 1, Ch. 173, L. 1957; amd. Sec. 67, Ch. 147, L. 1963; amd. Sec. 1, Ch. 282, L. 1965.

Amendments

The 1963 amendment deleted "in a special fund hereinafter created" after "superintendent of public instruction" in the last sentence.

The 1965 amendment substituted "of public schools and public education" for "in the operation and maintenance of public schools" near the end of the first sentence; added "and are hereby appropriated and made available to the superintendent of public instruction" at the end of the second sentence; and added the third, fourth, and fifth sentences.

Repealing Clause

Section 2 of Ch. 282, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 282, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 18, 1965.

75-5102. Repealed.

Repeal

This section (Sec. 2. Ch. 173, L. 1957), relating to the federal aid to education fund and expenditures therefrom, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 53—DRIVER EDUCATION

Section 75-5301. Purpose of act.
75-5302. Definition of terms.
75-5303. Superintendent of public instruction to administer program—boards may establish course.
75-5304. Driver education account established—penalty assessments and license proceeds credited to account.
75-5305. Penalty assessment added to bail.
75-5306. Transmittal of penalty assessments.
75-5307. Penalty assessments transmitted by courts.
75-5308. Allocation and disbursement of driver education account—administrative expense.
75-5309. Statements of penalty assessments levied and paid.

75-5301. Purpose of act. It is the purpose of this act to provide the financial assistance necessary to enable the board of trustees of any county high school or any district maintaining a secondary school which includes grades ten (10) to twelve (12) inclusive to offer a course in driver education and by that means to develop in the youth of this state a knowledge of the motor vehicle laws, an acceptance of personal responsibility on the public highways, and an understanding of the causes and consequences of traffic accidents. The course in driver education shall further provide to the youthful drivers of this state training in the skills necessary for the safe operation of motor vehicles.

History: En. Sec. 1, Ch. 226, L. 1965.

Title of Act

An act to provide for driver education; prescribing certain penalty assessments and driver's license fees for the financing thereof; creating an automobile driver education account in the earmarked revenue fund; providing for the duties of the superintendent of public instruction; providing for the reimbursement to school districts and county high schools qualifying under this act; amending **section 31-**114, R. C. M. 1947; amending section 1 chapter 149, Laws of 1961, compiled as section 94-801[-]2, R. C. M. 1947; amending section 32-1131, R. C. M. 1947; and providing a severability clause.

75-5302. Definition of terms. The following words and phrases whenever used in this act shall have the following meaning:

(1) "Superintendent" or "state superintendent" shall mean the superintendent of public instruction.

(2) "Driver education course" shall mean an accredited course of instruction in driver education which shall meet basic course requirements established by the superintendent of public instruction and each part of said course, both classroom instruction, and behind-the-wheel instruction, shall be taught by a qualified teacher of driver education.

Any or all portions of the course may be taught after regular school hours or on Saturdays as well as on regular school days or as a summer school course, at the option of the local board of trustees. High schools may co-operate in the presentation of such a course.

(3) "Qualified teacher of driver education" shall mean an instructor certified by the superintendent of public instruction to teach either the

classroom part or the behind-the-wheel part of the driver education course, or both, under regulations promulgated by the state superintendent.

History: En. Sec. 2, Ch. 226, L. 1965.

75-5303. Superintendent of public instruction to administer program —boards may establish course. (1) The superintendent of public instruction shall administer, supervise and develop the driver education program and shall assist local districts in the conduct of their driver education program.

(2) The board of trustees of any county high school or any district maintaining a secondary school which includes grades ten (10) to twelve (12) inclusive, may establish and maintain a driver education course for pupils enrolled in the secondary schools in the district or county high schools.

History: En. Sec. 3, Ch. 226, L. 1965.

75-5304. Driver education account established—penalty assessments and license proceeds credited to account. (1) There is hereby established an automobile driver education account in the earmarked revenue fund. There shall be levied and paid into this account a penalty assessment, in addition to the fines or bail forfeitures, on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles, in the following amounts:

(a) Where a fine is imposed, two dollars ($2) for each twenty dollars ($20) of fine, or fraction thereof.

(b) If bail is forfeited, two dollars ($2) for each twenty dollars ($20) of bail, or fraction thereof.

(c) Where multiple offenses are involved, the penalty assessment shall be based on the total fine or bail forfeited for all offenses.

Where a fine is suspended, in whole or in part, the penalty assessment shall be levied in accordance with the fine actually imposed.

(2) The state of Montana shall annually contribute to the account five per cent (5%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana. It shall be paid to the state treasurer of Montana and credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 4, Ch. 226, L. 1965.

75-5305. Penalty assessment added to bail. When any deposit of bail is made for an offense to which section 4 [75-5304] applies, the person making the deposit shall also deposit a sufficient amount to include the penalty assessment for forfeited bail.

History: En. Sec. 5, Ch. 226, L. 1965.

75-5306. Transmittal of penalty assessments. The gross proceeds of the penalty assessments provided for in section 4 [75-5304] shall be

transmitted to the city or county treasurer, as the case may be, by the court collecting the same, in the manner and at the times that fines and bail forfeitures are transmitted to such treasurers under law. The city and county treasurers shall transmit to the state treasurer monthly, and without deduction, the amount of such penalty assessments received, which shall be credited to the driver education account in the earmarked revenue fund.

History: En. Sec. 6, Ch. 226, L. 1965.

75-5307. Penalty assessments transmitted by courts. When a court is required under law to transmit fees, fines and forfeitures directly to the state treasurer of Montana, the gross proceeds of the penalty assessments shall likewise be so transmitted, and credited to the driver education account in the earmarked revenue fund by the state treasurer.

History: En. Sec. 7, Ch. 226, L. 1965.

75-5308. Allocation and disbursement of driver education account—administrative expense. All moneys in the automobile driver education account shall be disbursed annually by the superintendent of public instruction to school districts and county high schools providing driver education in accordance with the standards prescribed for such program and in accordance with such rules and regulations as may be promulgated by the superintendent of public instruction for the administration of this act; provided that reimbursements to schools shall be based on the number of pupils successfully completing the driver education program including both classroom instruction and practice driving (behind-the-wheel-driving).

Before such fund is allocated to the qualifying schools there shall be deducted therefrom such amount as may be necessary for the administration of this act including development, printing and distribution of essential materials, preparation of teachers qualified in driver education, supervision of the program, and any and all other purposes deemed necessary by the superintendent of public instruction, such amount not to exceed twelve thousand dollars ($12,000) during the first year this act is in effect and not to exceed twelve thousand dollars ($12,000) annually thereafter. Such state reimbursement for driver education shall be deposited by the county treasurer to the credit of the school district or county high school in a special nonbudgeted fund as provided in section 75-3722, R. C. M. 1947, and may be expended for the purposes provided by this act.

History: En. Sec. 8, Ch. 226, L. 1965.

75-5309. Statements of penalty assessments levied and paid. All courts handling offenses where there shall be levied and paid a penalty assessment as provided in section 4 [75-5304] of this act, and all city, town and county treasurers, shall furnish to the state superintendent statements of all penalty assessments levied and paid and records of cases which involve such offenses as the state superintendent may request.

History: En. Sec. 9, Ch. 226, L. 1965.

CHAPTER 54—SCHOOL SAFETY PATROLS

Section 75-5401. School safety patrols—establishment.
75-5402. Appointment of members.
75-5403. Liability not to attach.
75-5404. Identity and operation.
75-5405. Training of school safety patrol members.

75-5401. School safety patrols—establishment. In the exercise of authorized control and supervision over pupils attending schools and other educational institutions, both public and private, the governing board or other directing authority of any such school or institution is empowered to authorize the organization and supervision of school safety patrols for the purpose of influencing and encouraging other pupils to refrain from crossing public highways at points other than regular crossings and for the purpose of directing pupils when and where to cross highways.

History: En. Sec. 1, Ch. 170, L. 1965.

Title of Act

An act to establish school safety patrols; empowering the governing board or other directing authority of any school and other educational institutions, both public and private, to authorize the organization and supervision of school safety patrols for the purpose of influencing and encouraging other pupils to refrain from crossing public highways at points other than regular crossings, and for the purpose of directing pupils when and where to cross highways; providing for the qualification and appointment of members of school safety patrols; providing that no liability shall attach to the establishment of school safety patrols; providing for identification and operation of school safety patrols; providing for the training of school safety patrol members; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

75-5402. Appointment of members. If the parents or guardians of a pupil consent in writing to the school authorities to the appointment of the pupil on a school safety patrol, it is lawful for any pupil over nine years of age to be appointed and designated as a member thereof; provided that in any school in which there are no pupils who have attained such age, any pupil in the highest grade therein may be so appointed and designated.

History: En. Sec. 2, Ch. 170, L. 1965.

75-5403. Liability not to attach. No liability shall attach either to the school, educational institution, governing board, directing authority, or parent or guardian, or any individual director, board member, superintendent, principal, teacher or other school authority by virtue of the organization, maintenance or operation of such school safety patrol because of injuries sustained by any pupil, whether a member of the patrol or otherwise by reason of the operation and maintenance thereof.

History: En. Sec. 3, Ch. 170, L. 1965.

75-5404. Identity and operation. Identification and operation of school safety patrols shall be uniform throughout the state and the method of identification and signals to be used shall be as prescribed by the department of public instruction in co-operation with the Montana highway patrol.

History: En. Sec. 4, Ch. 170, L. 1965.

75-5405. Training of school safety patrol members. Any municipality, city or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol camp located in this state and may pay the expense necessarily incurred in providing such training, out of any funds available for said purpose.

History: En. Sec. 5, Ch. 170, L. 1965.

Repealing Clause

Section 6 of Ch. 170, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 170, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 55—SCHOOL DISTRICTS FOR NONSECTARIAN CHILD CARE INSTITUTIONS

Section 75-5501. Definition.
75-5502. Creation of new school district.
75-5503. Application for creation of district—plan of operation—area to be included—approval or disapproval—review.
75-5504. Hearing on application—time and place—notice—open to public—record of proceedings.
75-5505. Conduct of hearing—evidence supporting application—opposition.
75-5506. Action by board of trustees of existing district—order of county superintendent—review.
75-5507. Order creating district—description of boundaries—district number—beginning of existence—trustees—laws governing.
75-5508. Acquisition of contiguous land—boundaries of new district extended—children in area to attend school at child care institution.

75-5501. Definition. A licensed nonsectarian child care institution for the purpose of this act shall mean a nonsectarian institution licensed annually and regulated by the state of Montana.

History: En. Sec. 1, Ch. 105, L. 1965.

Title of Act

An act to provide for the creation of a school district within an existing school district by a licensed nonsectarian child institution for the education of children if said procedure is acceptable to the existing school district; providing for the creation and acceptance and the operation of the newly created school district; defining licensed nonsectarian child care institution; providing for the expansion of said school district and the attendance of pupils and designating students who shall be part of newly created school district; and providing for an effective date.

75-5502. Creation of new school district. Notwithstanding any other statutes of Montana relating to the creation, consolidation, annexation or abandonment of school districts, there may be created within any existing school district a new school district by a duly licensed child care institution operating facilities within said existing school district in the manner set forth herein.

History: En. Sec. 2, Ch. 105, L. 1965.

75-5503. Application for creation of district—plan of operation—area to be included—approval or disapproval—review. The county superintendent or superintendents of a school district shall create a separate school district for the education of children attending a duly licensed child care institution;

(1) When an application of a duly licensed child care institution is submitted to him or them; or

(2) When the petition of twenty per cent (20%) of the resident freeholders residing within a school district where such a child care institution is operating is submitted to him or them.

The child care institution within the new district shall submit a plan of operation including details of financing to the county superintendent or superintendents. The plan must be approved by him or them before the institution may operate under it. And be it further approved that all such money as has accrued shall remain to the credit of the parent school district. The application of the duly licensed child care institution or when petition is made shall specifically describe the area proposed to be included within said new school district, the estimated number of qualified electors and of pupils in said district and the estimated assessed valuation and taxable valuation of the property within such area as shown by the last completed assessment roll district. The clerk of the school district shall forthwith advise the county superintendent of the action of the board and the county superintendent of schools shall within ten (10) days after receiving such advice make an order in accordance therewith, provided that if the county superintendent shall conclude that the creating, existence and operation of such a new school district is not practical or feasible he shall have the authority to disapprove the same. The action taken by the county superintendent shall be subject to review by the state superintendent of public instruction whose decision shall be final.

History: En. Sec. 3, Ch. 105, L. 1965.

75-5504. Hearing on application—time and place—notice—open to public—record of proceedings. On receipt of such an application the county superintendent shall set a time for a hearing with respect to said application within thirty (30) days of such receipt and notice thereof shall be posted on the front door of the schoolhouse of the existing school district where the hearing is to be held for at least ten (10) days prior to such hearings. The hearing shall be open to the public and shall be at the schoolhouse of the existing district or at a designated schoolhouse if there be more than one and there shall be in attendance the trustees and clerk of the existing school district who shall be separately notified in writing of the time and place of the hearing by the county superintendent. The applicant shall also be notified in writing of the time and place of the hearing by the county superintendent. Such notice shall be given at least ten (10) days prior to the hearing. The county superintendent shall preside at the hearing and shall see that a record of the proceedings is kept.

History: En. Sec. 4, Ch. 105, L. 1965.

75-5505. Conduct of hearing—evidence supporting application—opposition. The applicant shall present such information and data in support of its application as it deems necessary and appropriate. The trustees of the existing district and the county superintendent may ask such questions as are pertinent to the application of any person or persons presenting information or data in behalf of the applicant and may present information and data in support of or in opposition to the application.

History: En. Sec. 5, Ch. 105, L. 1965.

75-5506. Action by board of trustees of existing district—order of county superintendent—review. Within thirty (30) days after the hearing the board of trustees of the existing district shall at a regular or special meeting thereof determine by majority vote whether or not the proposed new district as acceptable to the existing district. The clerk of the school district shall forthwith advise the county superintendent of the action of the board and the county superintendent shall within ten (10) days after receiving such advice make an order in accordance therewith, provided that if the county superintendent shall conclude that the creating, existence and operation of such a new school district is not practical nor feasible he shall have the authority to disapprove the same. The action taken by the county superintendent shall be subject to review by the state superintendent of public instruction whose decision shall be final.

History: En. Sec. 6, Ch. 105, L. 1965.

75-5507. Order creating district—description of boundaries—district number—beginning of existence—trustees—laws governing. If the order of the county superintendent shall provide for the creation of a new school district he shall specifically describe the boundaries thereof, designate the number of such school district and the said new district shall exist from and after the first day of July following the making of such an order. The county superintendent shall name the first trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors. All of the existing laws relating to school districts and their operations not inconsistent with this act shall apply to and govern such newly created district.

History: En. Sec. 7, Ch. 105, L. 1965.

75-5508. Acquisition of contiguous land—boundaries of new district extended—children in area to attend school at child care institution. In the event the duly licensed child care institution shall acquire land contiguous to the new school district after the creation of such school district, all children of persons residing upon such land shall attend the school for which the new school district was created for the duly licensed child care institution and such acquisition of land shall, upon acquisition by the duly licensed child care institution, be deemed for all purposes attendant with school and school affairs as part of the school district created for the duly licensed child care institution and the county superintendent of schools shall consider such newly acquired land as may be acquired as the new boundary for the school district created for the duly licensed child care institution and such lands acquired shall be deemed a part of and within the duly licensed child care institution's school district.

History: En. Sec. 8, Ch. 105, L. 1965.

Effective Date

Section 9 of Ch. 105, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

REVISED CODES OF MONTANA

VOLUME 5

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 5 OF THE 1947 REVISED CODES

AND

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For index see pocket supplement to Replacement Volume 9

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MONTANA REVISED CODES

TITLE 76—SOIL CONSERVATION

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CHAPTER 1—STATE SOIL AND WATER CONSERVATION DISTRICTS LAW

Section 76-101. Short title.
76-102. Legislative determinations, and declaration of policy.
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76-117. Change of district name—division and combination of districts.

76-101. Short title. This act may be known and cited as "the state soil and water conservation districts law."

History: En. Sec. 1, Ch. 72, L. 1939; amd. Sec. 1, Ch. 73, L. 1961.

Amendment

The 1961 amendment inserted "and water" in the name of the law.

76-102. Legislative determinations, and declaration of policy. It is hereby declared, as a matter of legislative determination:

A and B. * * * [Same as parent volume.]

C. The appropriate corrective methods. That to conserve soil resources and control and prevent soil erosion, and prevent floodwater and sediment damages and further the conservation, development, utilization and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of policy. It is hereby declared to be the policy of

the legislature to provide for the conservation of soil and soil resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959.

Amendment

The 1959 amendment in subd. C inserted the words "and prevent floodwater and sediment damages and further the conservation, development, utilization and disposal of water"; inserted the words "and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water"; inserted the words "desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage" and inserted the words "land drainage" after the words "contour furrowing." In subd. D the amendment inserted the clause beginning with the words "and for the prevention" and ending with the words "and disposal of water."

76-103. **Definitions.** Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil and water conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) to (11). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961.

Amendment

The 1961 amendment in subd. (1) inserted between the words "soil" and "conservation" the words "and water."

76-105. **Creation of soil conservation districts.** A. Any ten (10) occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;

(4) A request that the state soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any part of such petitions.

B. Within thirty (30) days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determinations and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in section 76-102. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearing held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare,

for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this act is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county (ies) of _____, _____, and _____" and "Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of _____ and _____" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of lands lying within the boundaries of the territory, as determined by the state soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D and E. * * * [Same as parent volume.]

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to

take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed sixty-five (65) per cent of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible; the said statement shall set fourth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors without cost a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this act.

G to I. * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961.

Amendment

The 1961 amendment substituted "soil and water conservation district" for "soil conservation district" each time it appears in the section and in the last paragraph of subd. A inserted the word "part" between "any" and "of."

76-107. Appointment, qualifications and tenure of supervisors. The governing body of the district shall consist of five (5) supervisors, elected as provided hereinabove.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959.

Amendment

The 1959 amendment substituted the sentence in the second paragraph beginning with the words "Any vacancy * * *" for two sentences which read: "Vacancies shall be filled for the unexpired term. The selection of successor to fill an unexpired term, or for a full term shall be by election."

Repealing Clause

Section 2 of Ch. 4, Laws 1959 repealed all acts and parts of acts in conflict therewith.

76-108. Powers of districts and supervisors. A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement neeeded, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the districts on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water may be carried out;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands of the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations, and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain,

administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion, and for flood prevention, and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention projects, or combination thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers;

to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959.

Amendment

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 3 of Ch. 5, Laws 1959 repealed all acts and parts of acts in conflict therewith.

76-117. Change of district name—division and combination of districts. (1) Petitions for changing the name of a district organized under this act may be filed with the state soil conservation committee. Any such petition shall be signed by [a] majority of the district supervisors and shall state the present name of the district and the proposed new name. If the committee determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of such determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of such certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the state committee for the division of any district or the combination of any two or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of such actions may be initiated by the filing of a single petition with the committee. Any such petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The committee shall prescribe the form for such petition. Upon the filing of any such petition, the committee shall within thirty (30) days give due notice of public hearing upon such petition. All occupiers of lands within the affected districts, and all other interested parties, shall have the right to attend such hearing and to be heard. After such hearing, the committee shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making such determination the committee shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the committee shall determine that the proposed division or combination, or division and combination, is administratively practicable and feasible, the committee shall affect such proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of such districts. If such determination is in the negative the committee shall make and record such determination and shall deny the petition. After six (6) months from the denial of such petition, a new petition may be filed involving any of such proposals.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each such divided part, the number of land occupiers and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of such allocation shall be filed with the state committee within thirty (30) days after the notification of the committee's determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, such allocation, it shall be made by the committee after such hearings as the committee may deem necessary, and with due regard for the standards set out in this paragraph for making such allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959.

Compiler's Note

The bracketed word "a" was inserted by the compiler.

Amendment

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 41, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—SOIL CONSERVATION DISTRICT ASSESSMENTS AND FUNDS

Section 76-201. Notice of organization of district filed.
76-202. Copies of notice transmitted to county commissioners.
76-204. Estimate of money to be raised by assessment.
76-205. Division between counties of money to be raised by assessment.
76-206. Expenses to be covered by estimate.
76-207. Regular assessments.
76-208. Maximum regular assessment.
76-209. Levy of assessment—maximum total levy.
76-210. Computation of rate of assessment.
76-211. Certification of assessment to assessor—entry on assessment roll.
76-212. Application of general law on levy and collection—liability of officers on bond.
76-213. "Principal county" defined.
76-214. Settlements by county treasurers other than of principal county.
76-215. Depository of district funds.
76-216. Receipt and crediting of district funds—responsibility on bond.
76-217. Payment of district moneys—warrants.
76-218. Treasurer's reports.
76-219. Purpose of expenditures.

76-201. Notice of organization of district filed. The supervisors of a soil conservation district shall, within ten (10) days after the creation

of the district, or within thirty (30) days after the effective date of this act, cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963.

Title of Act

An act to provide for the financing of soil conservation districts by the levy of assessments; providing the procedure therefor; providing an effective date.

76-202. Copies of notice transmitted to county commissioners. The county clerk and recorder shall, within thirty (30) days after receipt of such notice, transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized.

History: En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965.

Amendment

The 1965 amendment deleted "and a copy to the county assessor" from the end of the section.

76-203. Repealed.

Repeal

This section (Sec. 3, Ch. 253, L. 1963), relating to lists of grazing and agricultural lands, was repealed by Sec. 6, Ch. 152, Laws 1965.

76-204. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July, of each year, furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965.

Amendment

The 1965 amendment substituted "on or before the first Monday of July, of each year" for "from the list so prepared."

76-205. Division between counties of money to be raised by assessment. If the district lies in more than one county the supervisors of the district shall divide the amount of the estimate in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

History: En. Sec. 5, Ch. 253, L. 1963.

76-206. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district, the costs of the work which the supervisors may deem advisable to be done during the ensuing year, the estimated costs of repairs to and maintenance of the property and works of the district, and the estimated expenses of any action or proceeding to which the district is or may be a party, including the cost of employing engineers and attorneys.

History: En. Sec. 6, Ch. 253, L. 1963.

76-207. Regular assessments. Assessments levied pursuant to this act shall be known as regular assessments.

History: En. Sec. 7, Ch. 253, L. 1963.

76-208. **Maximum regular assessment.** The regular assessment in any one year shall not exceed one half (½) of one (1) mill on the dollar of total taxable valuation of real property within the county except that within incorporated cities and towns. The valuation shall be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965.

Amendment

The 1965 amendment substituted "real property within the county except that within incorporated cities and towns" at the end of the first sentence for "grazing and agricultural land within the district."

76-209. **Levy of assessment—maximum total levy.** The board of county commissioners of each county in which there lies any portion of the district may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the county except that within incorporated cities and towns. It shall be known as the "_____ (name of district) soil conservation district assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors; provided, however, that income from the levy of the assessment provided in this act for any single district shall not exceed one thousand dollars ($1000).

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965.

Amendment

The 1965 amendment divided the section into two sentences; substituted "taxable real property within the county except that within incorporated cities and towns" at the end of the first sentence for "grazing and agricultural land within the county and within the district"; and made minor changes in phraseology.

76-210. **Computation of rate of assessment.** The board of county commissioners shall determine the rate of assessment by deducting fifteen per cent (15%) for anticipated delinquencies from the total assessed value of the taxable real property in the county except within incorporated cities and towns and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of one hundred dollars ($100) it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965.

Amendment

The 1965 amendment substituted "taxable real property in the county except within incorporated cities and towns" in the first sentence for "grazing and agricultural land in the district and in the county."

Repealing Clause

Section 6 of Ch. 152, Laws 1965 read "Section 76-203, R. C. M. 1947, is repealed."

76-211. Certification of assessment to assessor—entry on assessment roll. The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this act. The assessment shall be certified to the county assessor of each of the respective counties and entered on the assessment roll.

History: En. Sec. 11, Ch. 253, L. 1963.

76-212. Application of general law on levy and collection—liability of officers on bond. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this act, are hereby adopted and made a part hereof. Said officers are liable on their several official bonds for the faithful discharge of their duties under this act.

History: En. Sec. 12, Ch. 253, L. 1963.

76-213. "Principal county" defined. "Principal county," as used in this act, means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: En. Sec. 13, Ch. 253, L. 1963.

76-214. Settlements by county treasurers other than of principal county. The treasurers of each of the counties, other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963.

76-215. Depository of district funds. The treasury of the principal county is the depository of all of the funds of the district.

History: En. Sec. 15, Ch. 253, L. 1963.

76-216. Receipt and crediting of district funds—responsibility on bond. The treasurer of the principal county shall receive and receipt for all money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this act, of the money of the district held by him.

History: En. Sec. 16, Ch. 253, L. 1963.

76-217. Payment of district moneys—warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor, or in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district signed by at least two (2) of such supervisors.

History: En. Sec. 17, Ch. 253, L. 1963.

76-218. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand, and the receipts and disbursements since his last report. Such report shall be verified.

History: En. Sec. 18, Ch. 253, L. 1963.

76-219. Purpose of expenditures. All moneys collected under this act shall be expended for the purposes provided in section 76-115.

History: En. Sec. 19, Ch. 253, L. 1963.

Effective Date

Section 20 of Ch. 253, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

Chapter 1. Militia, composition, enrollment—officers, general provisions, 77-117, 77-120, 77-151.
4. General provisions, 77-417, 77-419.
9. Veterans' free tuition at university of Montana, 77-909 to 77-911.

CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

Section 77-117. The adjutant-general of the state—assistant adjutants-general.
77-120. Duties of adjutant general—salary.
77-151. Claims against national guard appropriation.

77-117. (1346) **The adjutant-general of the state—assistant adjutants-general.** There shall be an adjutant-general of the state of Montana, who shall be appointed by the governor, and shall have the rank of major general. He shall hold office for the term for which the governor appointing him shall have been elected, and until his successor shall have been appointed. He shall be selected from the active list of the national guard of this state and shall have been federally recognized in the rank of major or above immediately prior to his appointment. He shall have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately prior to his appointment. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments. The salary of the adjutant-general shall be seventy-five hundred dollars ($7,500.00) per annum, provided, however, that no part of said salary shall be paid by the state when the adjutant-general is on extended active duty with the United States military service or is receiving pay as a civilian employee of the federal government; provided that if, by reason of the call or draft of officers of the Montana national guard into the federal service, there are no officers of the national guard possessing the requisite qualifications as set forth above for appointment, then any officer of the national guard may be appointed as acting adjutant-general.

The adjutant-general shall establish, within the state headquarters of the Montana national guard, separate departments for the army national guard and the air national guard. Each department shall have a brigadier general at its head, who will be referred to as assistant adjutant-general for Montana army national guard and assistant adjutant-general for Montana air national guard. The assistant adjutants-general shall be appointed by the adjutant-general with the approval of the governor. One shall be selected from the active list of the Montana army national guard and the other from the active list of the Montana air national guard, and each must have the qualifications set forth above for appointment as adjutant-general. They shall perform such duties as are prescribed by the adjutant-general.

History: En. Sec. 23, Ch. 191, L. 1919; re-en. Sec. 1346, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1949; amd. Sec. 1, Ch. 26, L. 1955; amd. Sec. 1, Ch. 272, L. 1959; amd. Sec. 1, Ch. 74, L. 1963.

Amendments

The 1959 amendment substituted "major general" for "brigadier general, provided, however, that he shall, upon the completion of five years service in such rank, have the rank of major general"; substituted the word "for" the first time it appears in the second sentence for the words "at the pleasure of the governor, and his commission shall expire with"; added the words "and until his successor shall have been appointed" and added the 3rd, 4th and 6th sentences in this section.

The 1963 amendment substituted the second paragraph for sentences reading: "There shall be an assistant adjutant-general of the state of Montana, who shall be appointed by the adjutant-general, with the approval of the governor. He shall be commissioned in the Montana national guard with rank not lower than that of captain. He shall assist the adjutant-general in the performance of his statutory duties, and, during the incapacity or absence from the state of the adjutant-general, shall act in his stead."

Repealing Clauses

Section 2 of Ch. 272, Laws 1959 read "Subsection twelve and subsection thirteen of section 77-120, Revised Codes of Montana, 1947, Replacment Volume 5, in conflict herewith are hereby repealed."

Section 3 of Ch. 272, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 74, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 26, 1963.

77-120. (1349) **Duties of adjutant general—salary.** The adjutant general shall be ex officio chief of staff. He shall hold office until his successor is appointed and qualified. He shall appoint the civilian employees of his department, and may remove any of them in his discretion.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures are audited, allowed, and paid.

1. The adjutant general shall keep a roster of all active, reserve, and retired officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and shall submit to the governor, during December of each even numbered year, a printed biennial report of the operations and conditions of the organized militia of Montana.

2. He shall cause the military law, the regulations of the organized militia of Montana, and such other military publications as may be necessary for the military service, to be printed, indexed, and bound at expense of the state, and distributed to the commissioned officers of the organized militia of Montana.

3 to 11. * * * [Same as parent volume.]

12. The annual salary of the adjutant general of the state of Montana shall be four thousand two hundred dollars ($4,200.00).

13. The annual salary of the assistant adjutant general of the state of Montana shall be three thousand six hundred dollars ($3,600.00).

History: En. Sec. 20, Ch. 191, L. 1919; re-en. Sec. 1349, R. C. M. 1921; subd. 12: En. Sec. 1, Ch. 118, L. 1947; re-en. Sec. 1, Ch. 20, L. 1949; subd. 13: Sec. 2, Ch. 118, L. 1947 as added Sec. 1, Ch. 20, L. 1949; amd. Sec. 2, Ch. 272, L. 1959; amd. Sec. 35, Ch. 177, L. 1965.

Compiler's Note.

The restoration of paragraphs 12 and 13 by the 1965 amendment apparently resulted from a clerical error.

Amendments

The 1959 amendment repealed paragraphs 12 and 13.

The 1965 amendment deleted from the second paragraph second and third sentences reading, "Before entering upon his official duties, the adjutant general must execute an official bond running to the state of Montana in the penal sum of one thousand dollars, conditioned upon the faithful performance of his duties, said bond to be submitted to the attorney general for approval, and when approved to be filed in the office of the secretary of state, the cost of said bond to be paid from the military fund of the state. The adjutant general shall obtain and pay for, from the military fund, a surety company bond or bonds running to the state of Montana, covering all of the officers of the organized militia of Montana responsible to the state for money or military property, such bond or bonds to be approved and filed in the same manner as the adjutant general's bond"; and, apparently by clerical error, restored paragraphs 12 and 13, which had been repealed by the 1959 amendment.

77-151. (1373) **Claims against national guard appropriation.** All bills, claims, and demands against the national guard appropriation shall be certified or verified in the manner prescribed by regulations promulgated by the governor, and shall be audited and approved by the adjutant-general and, if allowed, shall be paid from the national guard appropriation; provided, however, that in all cases where the organized militia or any part thereof is called into the service of the state in case of war, riot, insurrection, invasion, breach of the peace, disaster, or in aid of the civil authorities, warrants for allowed pay and expenses for such service shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund, on the order of the governor.

History: En. Sec. 45, Ch. 191, L. 1919; re-en. Sec. 1373, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1949; amd. Sec. 27, Ch. 97, L. 1961.

Amendment

The 1961 amendment after the words "if allowed," deleted the words "by the state board of examiners," and after the words "shall be paid" deleted the phrase "by the state treasurer upon the warrant of the state auditor."

77-158. (1378) **Exemption from arrest—privileges of militia.**

Cross-Reference

Special license plates for guardsmen, sec. 53-106.7.

CHAPTER 4—GENERAL PROVISIONS

Section 77-417. Acceptance of National Defense Facilities Act of 1950—controller authorized to enter into contracts for and on behalf of state.
77-419. Power to receive grants, donations, and gifts.

77-417. Acceptance of National Defense Facilities Act of 1950—controller authorized to enter into contracts for and on behalf of state. For and on behalf of the state of Montana, and in conformity with the requirements and provisions of that certain act of Congress approved September 11, 1950, known as the "National Defense Facilities Act," and entitled "An act to provide for the acquisition, construction, expansion, rehabilitation, conversion, and joint utilization of facilities necessary for the administration and training of the reserve components of the armed forces of the United States," and for other purposes, which act is also known as "The National Defense Facilities Act of 1950, Public Law 783, Congress of the United States of America," and amendments and/or extensions thereof as may hereafter be made, is hereby assented to. The state controller is

hereby authorized to, for, and on behalf of the state of Montana, to enter into all contracts and agreements with the United States government, or any office, department, or bureau thereof, relative to the location, acquisition, construction, expansion, rehabilitation, or conversion of facilities necessary for the administration and training of the Montana national guard, its units, its components, or any organization affiliated therewith, and other purposes in connection therewith, in order to comply with requirements and provisions of said act of Congress; and the state controller for and on behalf of the state of Montana is hereby authorized to do all things necessary, or required, to carry out fully the cooperation contemplated by said act of Congress and hereby assented to relative to the location, acquisition, construction, expansion, rehabilitation, conversion, and joint utilization of facilities necessary for the administration and training of the Montana national guard, its units, its components, or any organization affiliated therewith.

History: En. Sec. 3, Ch. 168, L. 1955; amd. Sec. 25, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "state controller" for "adjutant-general of the state of Montana" and "adjutant-general."

77-419. Power to receive grants, donations, and gifts. The state controller on behalf of the state of Montana is hereby authorized to receive grants, donations, and gifts of any property on behalf of the state of Montana for the purpose of complying with the aforesaid act of Congress, and any property acquired by the state of Montana, as aforesaid, because of said act of Congress, shall remain in the people of the state of Montana.

History: En. Sec. 5, Ch. 168, L. 1955; amd. Sec. 26, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "The state controller" for "The adjutant-general" at the beginning of the section; and deleted from the end of the section clauses reading, "and the adjutant-general of the state of Montana is hereby empowered to act as 'contracting officer' for the state of Montana under this act; provided that all contracts let under this act, and the said act of Congress, shall be subject to the approval of the state board of examiners of the state of Montana."

CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section 77-909. War orphans' attendance to be without fees.
77-910. Board of education to determine eligibility.
77-911. Supervision of attendance and charges.

77-905 to 77-908. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 201, L. 1955), relating to war orphans' educational fund concerning purpose, eligibility, attendance and amount of payment, was repealed by Sec. 4, Ch. 141, Laws 1957.

77-909. War orphans' attendance to be without fees. There shall be established under this act the authority of the state board of education to waive, the charges for the matriculation, tuition, any and all educational fees, for such children of members of the armed forces of the United States who served on active duty during World War II and/or the Korean conflict and who, at the time of entry into such service, had legal residence

in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States, as are now attending or may hereafter attend any of the units of the greater university of Montana, provided:

(a) The educational assistance to which an eligible person is entitled to under this act may be afforded him during the period beginning on his eighteenth birthday, or on the successful completion of his secondary schooling, whichever first occurs, and ending on his twenty-third birthday, except that,

(b) If he serves on duty with the armed forces as an eligible person after his eighteenth birthday but before his twenty-third birthday, then such period shall end five (5) years after his first discharge or release from such duty with the armed forces excluding from such five (5) years all periods during which the eligible person served on active duty before August 1, 1963, pursuant to (1) a call or order thereto issued to him as a reserve after July 30, 1961, or (2) an extension of an enlistment, appointment or period of duty with the armed forces pursuant to the laws of the United States of America; however, in no event shall such period be extended beyond his thirty-first birthday by reason of this paragraph.

History: En. Sec. 1, Ch. 141, L. 1957; amd. Sec. 1, Ch. 150, L. 1965.

Title of Act

An act to provide educational opportunities in the units of the greater university of Montana for the children of members of the armed forces of the United States killed while in the armed services of the United States or dying as a result of a disability or disease incurred while in said services during World War II and/or the Korean conflict; repealing Chapter 201, Laws of 1955; providing for the waiver of fees; repealing all acts and parts of acts in conflict herewith.

Amendment

The 1965 amendment substituted paragraphs (a) and (b) for "any such child shall enter such institution prior to attaining the age of twenty-one (21) years."

Repealing Clause

Section 2 of Ch. 150, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 150, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 3, 1965.

77-910. Board of education to determine eligibility. The state board of education shall determine the eligibility of any such child who shall make application for the benefits provided for in this act, and a finding by the United States veterans' administration that any such member was killed in action or died as the result of injury or other disability incurred in action shall be binding upon said board, but in the absence of such finding said board of education shall determine the facts.

History: En. Sec. 2, Ch. 141, L. 1957.

77-911. Supervision of attendance and charges. The state board of education shall satisfy itself of the attendance of any such child at any such institution.

History: En. Sec. 3, Ch. 141, L. 1957.

Repealing Clause

Section 4 of Ch. 141, Laws 1957 repealed chapter 201 of the Laws of 1955, and all acts and parts of acts in conflict therewith.

CHAPTER 10—VETERANS' WELFARE COMMISSION

77-1001. Veterans' welfare commission created.

References

Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars, 141 M 500, 379 P 2d 107.

77-1002. Duty of commission.

Funds to Private Veterans' Organizations

An appropriation made to the veterans' welfare commission to pay for secretarial services of two private veterans' organizations was prohibited by section 35, article V, and section 1, article XIII, of the constitution, even though the private organizations were performing public services identical with those of the commission and the commission had paid such secretaries for a ten-year period prior to the appropriation. Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars, 141 M 500, 379 P 2d 107.

77-1003. Repealed.

Repeal

This section (Sec. 3, Ch. 111, L. 1945), relating to the veterans' welfare fund, was repealed by Sec. 14, Ch. 80, Laws 1961.

77-1004. Repealed.

Repeal

This section (Sec. 4, Ch. 111, L. 1945), relating to bonds of the director and commission employees, was repealed by Sec. 51, Ch. 177, Laws 1965.

TITLE 78—STATE CAPITOL

Chapter 1. Custodian of state capitol, Repealed—Section 33, Chapter 271, Laws of 1963.
2. Montana veterans and pioneers building—adjunct to state capitol building, 78-202.
3. Veterans' memorial moneys, 78-302.
4. Declaration of policy as to state works—employment of architect to plan capitol addition—bond issue, Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963.
5. Capitol building land grant, 78-501, 78-503.
6. State laboratory building bonds, Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963.
7. State capitol repair and reconstruction, 78-737 to 78-746.
8. Governor's quarters, Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963.
9. Future building needs, Repealed—Section 33, Chapter 271, Laws of 1963.
10. Unemployment compensation commission building, 78-1001 to 78-1010.
11. Insurance on state buildings, 78-1101.

CHAPTER 1—CUSTODIAN OF STATE CAPITOL

(Repealed—Section 33, Chapter 271, Laws of 1963)

78-101 to 78-109. (310 to 315, 317 to 319) **Repealed.**

Repeal

These sections (Secs. 1 to 3, Ch. 157, L. 1907; Secs. 1 to 6, Ch. 46, L. 1917; Sec. 3, Ch. 225, L. 1963), relating to the custodian of the state capitol, were repealed by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 2—MONTANA VETERANS AND PIONEERS BUILDING—ADJUNCT TO STATE CAPITOL BUILDING

Section 78-202. Purpose and use of building.

78-201. Repealed.

Repeal

This section (Sec. 1, Ch. 204, L. 1945), relating to construction of the veterans and pioneers memorial building, was repealed by Sec. 33, Ch. 271, Laws 1963.

78-202. Purpose and use of building. "The Veterans and Pioneers Memorial Building" shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and said building shall be devoted to the use of the United Spanish War Veterans of Montana, the Veterans of Foreign Wars of Montana, the American Legion of Montana, the Disabled American Veterans of Montana, the World War I Veterans of Montana, the historical society of Montana, the society of Montana pioneers, and the sons and daughters of Montana pioneers, and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations, and for the librarian and other employees of the historical society of Montana.

History: En. Sec. 2, Ch. 204, L. 1945; amd. Sec. 1, Ch. 54, L. 1961; amd. Sec. 27, Ch. 271, L. 1963.

Amendments

The 1961 amendment inserted "the World War I Veterans of Montana."

The 1963 amendment substituted "'The Veterans and Pioneers Memorial Building'" at the beginning of the section for "Said building"; deleted "when completed" before "said building shall be devoted"; and substituted "the United Spanish War Veterans of Montana, the Veterans of Foreign Wars of Montana, the American Legion of Montana, the Disabled American Veterans of Montana" for "the war veterans organizations set forth in sections 78-301 to 78-305."

Repealing Clause

Section 2 of Ch. 54, Laws 1961 repealed all acts and parts of acts in conflict therewith.

78-203 to 78-208. Repealed.

Repeal

These sections (Secs. 3 to 8, Ch. 204, L. 1945; Sec. 1, Ch. 205, L. 1949), relating to construction of the veterans and pioneers memorial building and to the bond issue for the financing thereof, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

78-210, 78-211. Repealed.

Repeal

These sections (Secs. 10, 11, Ch. 204, L. 1945), relating to construction of the veterans and pioneers memorial building, were repealed by Sec. 33, Ch. 271, L. 1963.

CHAPTER 3—VETERANS' MEMORIAL MONEYS

Section 78-302. Expenditure of veterans' memorial moneys.

78-301. Repealed.

Repeal

This section (Sec. 1, Ch. 131, L. 1939), creating the veterans' memorial fund commission, was repealed by Sec. 33, Ch. 271, Laws 1963.

78-302. Expenditure of veterans' memorial moneys. The moneys deposited in the earmarked revenue fund as required by section 82-308 may be expended only for the construction, maintenance, furniture, dioramas, displays, works of art and workmanship for the veterans' quarters of the veterans'-pioneers' memorial building. The veterans' organizations occupying the veterans' quarters of the veterans and pioneers memorial building, before July 1 of each year preceding a legislative session, shall submit a budget to the state controller for expenditures [from the veterans' memorial fund] for the next biennium. The controller shall include in the department of administration budget, a request for an appropriation [from the veterans' and pioneers' memorial fund] for the purposes mentioned above.

History: En. Sec. 2, Ch. 131, L. 1939; amd. Sec. 1, Ch. 121, L. 1955; amd. Sec. 163, Ch. 147, L. 1963; amd. Sec. 28, Ch. 271, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 271. Neither amendatory act mentioned nor included the changes made by the other. The only apparent conflict between the two amendments is that certain language in the sentences added by Ch. 271 (see amendment note below) may be obsolete in view of changes made by Ch. 147 in this and other sections. The compiler has made a composite section incorporating the changes made by both sections, and has placed brackets around the language that may now be obsolete.

Amendments

Chapter 147, Laws 1963, substituted "The moneys deposited in the earmarked revenue fund as required by section 82-308 are" at the beginning of the section for "The veterans' memorial fund heretofore created shall be placed"; and substituted "expend such moneys" in the first sentence for "expend said fund and the accruals thereto."

Chapter 271, Laws 1963, substituted "may be expended only" near the beginning of the section for "heretofore created shall be placed under the exclusive control and jurisdiction of said commission which

is empowered to expend said fund and the accruals thereto"; deleted from the end of the first sentence the words "and the necessary expenses of the commission"; and added the second and third sentences.

78-303 to 78-308. (4562.1 to 4562.3) Repealed.

Repeal

These sections (Sec. 12, Ch. 103, L. 1927; Secs. 1, 2, Ch. 60, L. 1929; Secs. 3 to 5, Ch. 131, L. 1939), relating to construction of the veterans' memorial building, and to the veterans' memorial fund, were repealed by Sec. 33, Ch. 271, Laws 1963. Sections 78-305 to 78-308 were also repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 4—DECLARATION OF POLICY AS TO STATE WORKS—EMPLOYMENT OF ARCHITECT TO PLAN CAPITOL ADDITION—BOND ISSUE

(Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963)

78-401 to 78-416. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 2, L. 1945; Secs. 1 to 10, Ch. 59, L. 1947; Secs. 1, 2, Ch. 68, L. 1947), relating to plans and a bond issue for an addition to the state capitol, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 5—CAPITOL BUILDING LAND GRANT

Section 78-501. Disposal of revenue.
78-503. Dedication of funds.

78-501. Disposal of revenue. The state treasurer is hereby authorized and instructed to deposit in the federal and private revenue fund all revenue from the capitol building land grant.

History: En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposit in the federal and private revenue fund" for "set aside in a fund, to be known as the 'capitol building fund'"; and deleted from the end of the section the words "from and after the time that sufficient funds have been accumulated to meet the principal and interest on the refunding of the capitol building bonds as authorized in Chapter 133, Session Laws of 1939."

78-502. Repealed.

Repeal

This section (Sec. 2, Ch. 120, L. 1943), relating to transfer of certain funds to the capitol building fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

78-503. Dedication of funds. The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions, thereto, in accordance with the provisions of section 12 of the enabling act.

History: En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "in said capitol building fund" after "accumulated."

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

CHAPTER 6—STATE LABORATORY BUILDING BONDS

(Repealed—Section 242, Chapter 147, Laws of 1963;
Section 33, Chapter 271, Laws of 1963)

78-601 to 78-620. Repealed.

Repeal

These sections (Secs. 1 to 8, 10, Ch. 258, L. 1947; Secs. 1 to 9, Ch. 166, L. 1953; Secs. 1, 2, Ch. 227, L. 1955), relating to state laboratory building bonds, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 7—STATE CAPITOL REPAIR AND RECONSTRUCTION

Section 78-737. Improvement and repair of state capitol—borrowing of state funds authorized.
78-738. Employment of architects and engineers.
78-739. Bids and contracts—contractors' bonds.
78-740. Maximum borrowing power.
78-741. Terms of bonds, indentures, and notes.
78-742. Sale of bonds, indentures, and notes—registration and accounts.
78-743. Funds available for repayment of obligations.
78-744. Moneys deposited in sinking fund.
78-745. Budget act inapplicable.
78-746. Consultation as to legislative areas.

78-701 to 78-736. Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 7, L. 1953; Secs. 1 to 9, Ch. 2, L. 1955; Secs. 1 to 9, Ch. 278, L. 1955; Secs. 1 to 9, Ch. 248, L. 1957), relating to state capitol repair and reconstruction, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

78-737. Improvement and repair of state capitol—borrowing of state funds authorized. In order to provide for the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana, the state board of examiners of the state of Montana is authorized to borrow sums of money from time to time from the unpledged investment funds available to any state agency or division of government, and to issue bonds, indentures or notes therefor.

History: En. Sec. 1, Ch. 257, L. 1963.

Title of Act

An act authorizing the state board of examiners to borrow up to one million dollars ($1,000,000) for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building of the state of Montana at Helena, Montana; providing for the issuance of bonds, indentures and/or notes; dedicating income from capitol building land grant for repayment of loans; enumerating the power and duties of the state board of examiners in carrying out the provisions of this act; and providing for an effective date and a severability clause.

78-738. Employment of architects and engineers. The state board of examiners is hereby authorized, directed and empowered to employ an architect or architects, an engineer or engineers for such period of time as it may deem proper for the purpose of making the necessary studies and preparing complete plans and specifications; and to proceed with the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building without delay.

History: En. Sec. 2, Ch. 257, L. 1963.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

78-739. Bids and contracts—contractors' bonds. The state board of examiners shall call for bids for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in such amounts as the board may determine, conditioned for the faithful performance of their duties and contracts.

History: En. Sec. 3, Ch. 257, L. 1963.

78-740. Maximum borrowing power. The aggregate amount which the state board of examiners is authorized to borrow under this act for the purposes herein expressed shall not be in excess of the sum of one million dollars ($1,000,000).

History: En. Sec. 4, Ch. 257, L. 1963.

Cross-Reference

Financing of long-range building program, secs. 79-2201 to 79-2205.

78-741. Terms of bonds, indentures, and notes. The bonds, indentures and/or notes issued by the state board of examiners under authority of this act shall not bear interest at a rate in excess of four per cent (4%) per annum payable semiannually. They shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding fifteen (15), as said board may specify. All bonds, indentures and/or notes shall be optional and redeemable at any time after the date of issue, at the option of the state board of examiners. Said bonds, indentures and/or notes shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. Coupons attached to any such bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 257, L. 1963.

78-742. Sale of bonds, indentures, and notes—registration and accounts. Said bonds, indentures and/or notes shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds, indentures and/or notes shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds, indentures and/or notes.

History: En. Sec. 6, Ch. 257, L. 1963.

78-743. Funds available for repayment of obligations. The principal and interest of the bonds, indentures and/or notes authorized by this act shall be payable out of the following fund and from it only: As much as may be necessary from the income received from the capitol building land grant shall be, and the same is hereby dedicated and appropriated for the repayment of the principal and interest of the bonds, indentures and/or notes provided for by this act.

History: En. Sec. 7, Ch. 257, L. 1963.

DECISIONS UNDER FORMER LAW

Use of Capitol Land Grant Funds

Capitol land grant funds may be used to repair, renovate or construct an old building and install a roll call voting machine in the chambers of the house of representatives, as such use is contemplated by section 12 of the Enabling Act, as it existed prior to amendment. State ex rel. Morgan v. Board of Examiners, 131 M 188, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners, 130 M 512, 305 P 2d 340. (Dissenting opinion, 131 M 188, 309 P 2d 336, 341.)

Section 12 of the Enabling Act (as it existed prior to amendment in 1957), which authorized the use of land grant funds for erection or construction of buildings for executive, legislative, and judicial purposes, confers implied authority to keep the building in a proper state of repair so as to serve the purpose intended. State ex rel. Morgan v. Board of Examiners, 131 M 188, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners, 130 M 512, 305 P 2d 340. (Dissenting opinion, 131 M 188, 309 P 2d 336, 341.)

78-744. Moneys deposited in sinking fund. To provide for the payment of the interest and principal of the bonds, indentures and/or notes authorized by this act, all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds, indentures and/or notes and the reconstruction, improvement, remodeling, repair and furnishing of said capitol building shall be paid and deposited in the sinking fund in the state treasury.

History: En. Sec. 8, Ch. 257, L. 1963.

78-745. Budget act inapplicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 9, Ch. 257, L. 1963.

78-746. Consultation as to legislative areas. The state board of examiners shall consult with the members of the legislative council as to plans for remodeling the legislative areas of the building.

History: En. Sec. 10, Ch. 257, L. 1963.

Separability Clause

Section 11 of Ch. 257, Laws 1963 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 257, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

CHAPTER 8—GOVERNOR'S QUARTERS

(Repealed—Section 242, Chapter 147, Laws of 1963; Section 33, Chapter 271, Laws of 1963)

78-801 to 78-818. Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 77, L. 1953; Secs. 1 to 9, Ch. 277, L. 1955), relating to the governor's quarters, were repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 9—FUTURE BUILDING NEEDS

(Repealed—Section 33, Chapter 271, Laws of 1963)

78-901 to 78-909. Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 279, L. 1955), relating to future building needs, were repealed by Sec. 33, Ch. 271, L. 1963. Section 78-908 was also repealed by Sec. 242, Ch. 147, L. 1963.

CHAPTER 10—UNEMPLOYMENT COMPENSATION COMMISSION BUILDING

Section 78-1001. Bond issue authorized for erection of unemployment compensation commission building.
78-1002. Architect—employment—construction and design.
78-1003. Bids—contractor's bond.
78-1004. Amount of bonds authorized.
78-1005. Interest rate—term—other provisions of bonds.
78-1006. Sale of bonds—registration.
78-1007. Payment of principal and interest.
78-1008. Unemployment compensation commission building interest and sinking fund.
78-1009. Purchase of bonds by board of land commissioners.
78-1010. Budget act not applicable.

78-1001. Bond issue authorized for erection of unemployment compensation commission building. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of erecting an unemployment compensation commission building as an adjunct to the state capitol building at Helena, Montana, and for the purpose of landscaping and paving around said building, said building to be erected upon a site upon the present capitol building grounds, adjacent to the capitol buildings, namely lots 9 through 24, inclusive, in block 20 of the Corbin Addition to the City of Helena, County of Lewis and Clark, Helena, Montana.

History: En. Sec. 1, Ch. 196, L. 1959.

Title of Act

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of erecting an unemployment compensation commission building as an adjunct to the state capitol building; designating the funds from which said bonds shall be paid; providing for an unemployment compensation commission building interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state board of land commissioners to purchase said bonds with moneys from the long term investment fund; providing a savings clause; and providing an effective date.

78-1002. Architect — employment — construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications, and to proceed with the erection of a building of suitable construction and design for use as an unemployment compensation commission building within the limitations prescribed by the United States bureau of employment security and the United States secretary of labor.

History: En. Sec. 2, Ch. 196, L. 1959.

78-1003. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of said building and for the landscaping and paving around it, and let contracts for the same, all in accordance

with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 196, L. 1959.

78-1004. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of six hundred thousand dollars ($600,000).

History: En. Sec. 4, Ch. 196, L. 1959.

78-1005. Interest rate — term — other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at a rate not exceeding five per cent (5%) per annum, payable semi-annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 196, L. 1959.

78-1006. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 196, L. 1959.

78-1007. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the unemployment compensation commission at Helena, Montana, immediately following occupancy of said building upon completion of erection, pursuant to title III of the social security act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; pro-

vided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of six hundred thousand dollars ($600,000).

History: En. Sec. 7, Ch. 196, L. 1959.

Compiler's Note

Section 903 of the social security act, as amended, referred to in this section, appears in United States Code, Title 42, sec. 903. Title III appears as Title 42, secs. 501 to 503.

78-1008. Unemployment compensation commission building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the unemployment compensation commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said building including the landscaping and paving around it.

History: En. Sec. 8, Ch. 196, L. 1959.

78-1009. Purchase of bonds by board of land commissioners. The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006 of the Revised Codes of Montana, 1947.

History: En. Sec. 9, Ch. 196, L. 1959.

78-1010. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 10, Ch. 196, L. 1959.

Separability Clause

Section 11 of Ch. 196, Laws 1959 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 196, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

CHAPTER 11—INSURANCE ON STATE BUILDINGS

Section 78-1101. Insurance on state buildings—use of proceeds.

78-1101. Insurance on state buildings—use of proceeds. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the state highway commission by purchase or condemnation for right-of-way purposes, shall be deposited in the bond proceeds and insurance clearance fund. These moneys may only be:

(a) Used to repair the damaged property, or

(b) Used to replace the damaged property, subject to the limitations in subsection (2) of this section, or

(c) Transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this

manner may not be spent by the institution or agency having custody of the damaged property, but shall be available for future legislative appropriation. If the moneys are not spent or committed within two (2) years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

(2) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subparagraph (c) of subsection (1) of this section.

History: En. Sec. 1, Ch. 110, L. 1963.

Title of Act

An act providing that moneys received by the state as indemnification for damage to state buildings may only be used to repair the damaged property, to replace the damaged property, or be transferred to the fund and account from which premiums were paid on the insurance policy, and providing exceptions.

TITLE 79—STATE FINANCE

Chapter 1. General fiscal duties of state auditor, 79-104.
2. General fiscal duties of state treasurer, 79-201, 79-202.
3. State depository board—deposit and investment of state funds, 79-301, 79-304, 79-306.
4. Treasury fund structure, 79-409 to 79-416.
5. State horticultural revolving fund—revolving funds of department of agriculture, Repealed—Section 242, Chapter 147, Laws of 1963.
6. Perpetual appropriations for support of state institutions—contingent revolving accounts, 79-601 to 79-603.
8. Miscellaneous powers and duties of state treasurer—suspension, 79-813.
9. Expenditures by state departments in excess of income prohibited, 79-901, 79-904.
10. State budget act, 79-1011 to 79-1019.
12. Montana trust and legacy fund—unified investment plan, 79-1202, 79-1203, 79-1206, 79-1208, 79-1211 to 79-1214.
13. Post war planning and construction reserve fund, Repealed—Section 1, Chapter 55, Laws of 1959.
14. Investment income of state institutions, 79-1401 to 79-1403.
18. General refunding act applicable to all outstanding bonds, 79-1802.
19. Revenue bond refinancing act of 1937, 79-1905.
20. Bond validating act, 79-2001 to 79-2004.
21. Flood control funds—disposal, 79-2101, 79-2102.
22. Long-range building program bonds, 79-2201 to 79-2205.

CHAPTER 1—GENERAL FISCAL DUTIES OF STATE AUDITOR

Section 79-104. Order in which warrants must be drawn.

79-103. (153) Repealed.

Repeal

This section (Sec. 422, Pol. C. 1895), relating to the school fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

79-104. (154) Order in which warrants must be drawn. All warrants for claims which have been audited by the state controller and filed in his office must be drawn in the order in which they are transmitted to him by the controller.

History: En. Sec. 423, Pol. C. 1895; re-en. Sec. 173, Rev. C. 1907; re-en. Sec. 154, R. C. M. 1921; amd. Sec. 5, Ch. 97, L. 1961. Cal. Pol. C. Sec. 436.

Amendment

The 1961 amendment substituted "state controller" for "board of examiners" and, at the end of the section, substituted "order in which they are transmitted to him by the controller" for "order of the numbers placed upon them by that board."

CHAPTER 2—GENERAL FISCAL DUTIES OF STATE TREASURER

Section 79-201. State treasurer—general fiscal duties.
79-202. State moneys, how expended by treasurer.

79-201. (174) State treasurer—general fiscal duties. It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.

2. To file and keep the certificates of the state auditor delivered to him when moneys are paid into the treasury.

3. To deliver to each person paying money into the treasury and to the state auditor and state controller a duplicate receipt showing the

amount, the sources from which the money accrued, and the funds and accounts into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants out of the funds upon and in the order in which they are drawn.

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds.

8. To report to the state controller, on the last day of each month, the amount disbursed for the redemption of bonds and in payment of warrants during the month; which report must show the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund.

9 to 12. * * * [Same as parent volume.]

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R. C. M. 1921; amd. Sec. 8, Ch. 147, L. 1963. Cal. Pol. C. Sec. 452.

Amendment

The 1963 amendment inserted "and state controller" after "state auditor" in paragraph 3; inserted "and accounts" after "the funds" in paragraph 3; deleted "drawn by the state auditor" after "warrants" in paragraph 4; substituted "state controller" for "state auditor" in paragraph 8; and deleted "the date and number of such bonds and warrants" after "report must show" in paragraph 8.

79-202. (193) **State moneys, how expended by treasurer.** No moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer save by virtue of unexhausted appropriation therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state controller, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R. C. M. 1921; amd. Sec. 6, Ch. 97, L. 1961.

Amendment

The 1961 amendment substituted the words "the state controller" for "the state board of examiners" where they appear after the words "claim duly approved by."

79-207. (179) **Repealed.**

Repeal

This section (Sec. 441, Pol. C. 1895), defining the general fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 3—STATE DEPOSITORY BOARD—DEPOSIT AND INVESTMENT OF STATE FUNDS

Section 79-301. State depository board—funds in the hands of the state treasurer.
79-304. State depository board to invest money in state sinking funds.
79-306. State treasurer as treasurer of state agencies—deposits of moneys.

79-301. (182) **State depository board—funds in the hands of the state treasurer.** (1) to (4). * * * [Same as parent volume.]

(5) Any bank pledging securities as provided in this act may at any time it deems it advisable or desirable substitute securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the state depository board at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank.

History: Ap. p. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 180, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; amd. Sec. 1, Ch. 35, L. 1963.

Amendment

The 1963 amendment added subsection (5).

79-304. State depository board to invest money in state sinking funds. Whenever there is any money in the sinking fund for any state bonds or other obligations issued by the state of Montana or any agencies thereof, either now existing or hereafter created and established, which is not required for the immediate payment of principal or interest of any state bonds or other obligations issued by the state of Montana or any agencies thereof, or which cannot be used for the payment and redemption of such bonds or obligations outstanding because of the same not being then redeemable under the option provisions contained therein, the state depository board is hereby directed and empowered to cause the same to be invested by the state board of land commissioners as part of the short term investment fund; provided, however, that none of such moneys will be invested in bonds or securities except as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for payment of principal and interest, or the time when such moneys can be used for such purpose because of the optional date provided for in the bonds or obligations having arrived.

History: En. Sec. 1, Ch. 68, L. 1941; amd. Sec. 1, Ch. 101, L. 1945; amd. Sec. 5, Ch. 176, L. 1953; amd. Sec. 10, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the sinking fund" for "any sinking and interest fund" near the beginning of the section; and deleted "of such outstanding state bonds or obligations to which such sinking and interest fund belongs" after "payment of principal and interest" in the proviso.

79-306. (192) State treasurer as treasurer of state agencies—deposits of moneys. (1) The state treasurer is hereby designated the treasurer of each and every state board, commission, bureau, department and state institution, now existing or hereafter to be created or established. All departments of the state government located at the capitol shall deposit with the state treasurer daily all moneys, credits, evidences of indebtedness and securities received.

(2) All state boards, commissions, bureaus, departments and state institutions not located in the capitol shall deposit daily all moneys, credits,

evidences of indebtedness and securities in banks located in the city or town in which such boards, commissions, bureaus, departments and state institutions are situated, provided there is a qualified bank in such city or town, to be designated by the state treasurer with the approval of the state depository board, or with the state treasurer. Such banks shall furnish indemnifying bonds or pledge securities in amounts sufficient to cover all such deposits at all times, and such deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and such deposits shall draw interest as other state moneys. Indemnifying bonds and pledged securities shall be subject to the approval of the state depository board.

History: En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1931; amd. Sec. 9, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from the end of subsection (1) clauses reading, "and the state treasurer shall give such departments credit on their suspense accounts, which the state treasurer is hereby directed to set up, and such deposits shall be subject to the final payment of all items, and the state treasurer is directed to charge back against such suspense accounts all items unpaid for any reason"; and deleted a former subsection (3), for text of which see parent volume.

CHAPTER 4—TREASURY FUND STRUCTURE

Section 79-409. Title and purpose of act.
79-410. Fund structure.
79-411. Previous definitions of funds—future provisions for segregation of moneys.
79-412. Additional accounts authorized.
79-413. Creation and abolition of new accounts.
79-414. Maintenance of fund and account records—accounting procedures.
79-415. Appropriation and disbursement of moneys from the treasury.
79-416. Special funds abolished—transfer to general fund.

79-401 to 79-408. (198.1 to 198.8) **Repealed.**

Repeal

These sections (Secs. 1 to 8, Ch. 110, L. 1923; Sec. 1, Ch. 157, L. 1947), relating to controlling fund accounts, were repealed by Sec. 242, Ch. 147, Laws 1963.

79-409. Title and purpose of act. This act may be cited as the "Treasury Fund Structure Act." The purpose of this act is to simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislative assembly with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect governmental costs and revenues.

History: En. Sec. 1, Ch. 147, L. 1963.

Title of Act

An act reorganizing the state treasury fund structure and revising state fiscal procedures for the appropriation, collection, spending and accounting of public and other moneys; amending sections 79-201, 79-306, 79-304, 79-601, 79-603, 79-813, 79-1011, 79-1015, 79-1202, 79-1203, 79-1206, 79-1208, 79-1211, 79-1212, 79-1213, 79-1214, 79-1401, 79-1403, 62-305, 3-233, 3-408, 3-420, 3-510, 3-602, 3-704, 3-904, 3-1709, 3-1715, 3-1717, 3-1906, 3-1910, 3-2004, 3-2007, 3-2207, 3-2302, 3-2315, 3-2503, 3-2803, 44-509, 44-510, 44-514, 78-501, 78-503, 84-1901, 75-3612, 75-3613, 75-3614, 75-3615, 75-3616, 75-3618, 75-3619, 75-3620, 75-3621, 75-3413, 75-2521, 75-3503, 75-3505, 75-4802, 82-3104, 75-5101, 69-3015, 11-1920, 11-1921, 15-2024, 40-2717, 82-1507, 82-1505, 82-1511, 82-1516, 82-1517, 89-116.1, 89-120, 89-402, 93-2011, 93-2014, 93-2015, 93-2020, 44-410, 44-412, 82-503, 46-105, 84-5212, 46-609, 46-704, 46-707, 46-804, 46-806, 46-911, 52-322, 46-1901, 46-1903, 46-1904, 46-1912,

46-1914, 46-1915, 84-5214, 84-2708, 3-2704, 46-904, 46-1006, 46-803, 84-5211, 91-502, 91-504, 91-505, 91-506, 91-507, 91-512, 91-523, 91-526, 66-1237, 69-3404, 66-1307, 66-1311, 66-1314, 66-2333, 66-2104, 66-2106, 66-2203, 66-2204, 66-1008, 66-1009, 66-607, 66-603, 66-608, 66-2503, 66-1527, 66-809, 82-702, 83-709, 66-407, 66-408, 66-108, 66-109, 66-513, 66-2403, 66-2407, 66-1405, 66-1410, 66-904, 66-906, 66-909, 66-919, 66-925, 66-2604, 66-2605, 66-2606, 46-2306, 46-2331, 27-409, 27-417, 26-121, 60-145, 60-147, 82-308, 78-302, 92-116, 92-119, 92-820, 69-1516, 92-840, 92-902, 92-1005, 92-1119, 92-1334, 92-1358, 92-120, 92-1101, 92-1105, 92-1102, 92-1103, 92-1106, 92-1110, 92-1114, 92-1115, 92-1116, 92-1122, 92-1123, 92-1112, 92-1113, 92-1302, 92-1343, 92-1357, 11-2030, 11-2025, 11-2026, 11-2028, 92-709A, 75-2708, 68-405, 59-1103.1, 59-1104, 59-1105, 31-201, 31-205, 31-206, 31-209, 31-210, 87-111, 87-112, 87-133, 84-5621, 71-901, 4-229, 32-1619, 84-1840, 84-1802, 28-111, 81-1410, 28-123, 28-124, 81-1601, 1-501, 84-1819, 5-910, 75-3701, 81-1001, 81-1005, 75-1315, 19-121, 53-122, 94-35-152.13, 80-720, 38-210, 80-322, 66-1812, 28-304, 75-706, 75-807, 75-811, 75-723, 89-401, 27-313, R. C. M. 1947; and repealing sections 79-103, 79-207, 79-401 through 79-408, 79-1008, 79-1204, 79-1205, 79-1210, 79-501 through 79-505, 3-203, 78-203 through 78-208, 78-401 through 78-416, 78-502, 78-601 through 78-620, 78-701, through 78-727, 78-728 through 78-736 enacted as sections 1 through 9, Chapter 248, Laws of 1957, 78-801 through 78-818, 78-908, 75-5102, 89-116.2, 89-403, 93-2021, 93-2022, 93-2025, 44-407, 3-2703, 46-241, 91-510, 91-511, 91-513, 66-2418, 81-2011, 81-2016, 81-2122, 81-2124, 46-2330, 60-139, 78-305, 78-306, 78-307, 78-308, 92-837, 11-2021, 4-231, 80-115, 80-747, R. C. M. 1947

79-410. Fund structure. There are in the state treasury only the following funds:

(1) General fund. The general fund consists of all moneys deposited in the state treasury which are available to defray the general costs of state government and which do not fall into one of the categories enumerated below.

(2) Earmarked revenue fund. The earmarked revenue fund consists of moneys from state sources deposited in the state treasury which are specifically earmarked by law for the purpose of defraying the costs of a particular agency, program, or function of state government.

(3) Sinking fund. The sinking fund consists of moneys deposited in the state treasury for the payment of principal and interest, and the accumulation of reserves for bonded or other indebtedness.

(4) Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

(5) Federal and private grant clearance fund. The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses to persons, associations or units of local government. When the final disposition of expendable federal or private moneys is unknown at the time of receipt, they shall be deposited in the federal and private grant clearance fund; but those moneys to be used for the operation of state government shall be transferred to the federal and private revenue fund prior to disbursement.

(6) Bond proceeds and insurance clearance fund. The bond proceeds and insurance clearance fund consists of

(a) Moneys deposited in the state treasury obtained from the sale of bonds, certificates of indebtedness or similar obligations.

(b) Moneys indemnifying the state for loss or damage of property.

(7) Revolving fund. (a) The revolving fund consists of moneys used to

(i) Defray reimbursable expenditures, and

(ii) Supply working capital for enterprise-type operations.

(b) An appropriation of a specific amount from the revolving fund is not a limitation on total expenditures for the period for which the appropriation is made, but is the maximum amount that may be withdrawn at any given time.

(8) Trust and legacy fund. The trust and legacy fund consists of moneys deposited in the state treasury which the state administers as a trustee pursuant to a law or a trust agreement restricting the use of the money for a specified purpose and prohibiting the expenditure of the principal for a period of at least five (5) years.

(9) Agency fund. The agency fund consists of moneys deposited in the state treasury which are held and disbursed by the state as a custodian or agent, and includes, but not limited to moneys held for the purpose of paying insurance or retirement benefits, moneys arising from lost or unclaimed property, and other moneys of a similar nature.

History: En. Sec. 2, Ch. 147, L. 1963.

79-411. Previous definitions of funds—future provisions for segregation of moneys. (1) It is the intent of the legislative assembly that the definitions in section 2 [79-410] of this act supersede all previous definitions of public funds which are inconsistent with the definitions found in this act.

(2) Any laws enacted in the future, or any contracts entered into in the future in pursuance of law, that require the segregation of moneys in the state treasury by means of a separate treasury fund, shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by section 2 [79-410] of this act.

History: En. Sec. 3, Ch. 147, L. 1963.

79-412. Additional accounts authorized. The enumeration of treasury funds in section 2 [79-410] of this act does not prohibit the state treasurer from establishing and maintaining

(1) Clearance or suspense accounts for the purpose of paying refunds, for the purpose of grouping payments from different funds or accounts prior to disbursement, or for the purpose of conveniently processing receipts before crediting the proper fund.

(2) Investment funds authorized under the "Unified Investment Plan."

History: En. Sec. 4, Ch. 147, L. 1963.

79-413. Creation and abolition of new accounts. Moneys deposited in each fund except the general fund shall be segregated by the state controller by specific accounts based on source, function or department. When moneys deposited in the state treasury cannot logically be credited to an existing account, or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the controller, in his discretion, may create new accounts consistent with the definitions in section 2 [79-410] of this bill [act]; however, the controller shall create as few new accounts as practicable. The controller shall

periodically examine all accounts, and shall abolish or consolidate inactive or unnecessary accounts.

History: En. Sec. 5, Ch. 147, L. 1963.

79-414. Maintenance of fund and account records—accounting procedures. (1) The state treasurer shall record receipts and disbursements for treasury funds, and shall maintain fund records in such a manner as to reflect the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual subfunds within the sinking fund, bond proceeds and insurance clearance fund, and trust and legacy fund in such a manner as to reflect the total cash and invested balance of each subfund. When necessary to meet federal or other requirements that moneys be segregated in the treasury, the state treasurer may establish subfunds within any funds listed in section 2 [79-410] of this act.

(2) The state controller shall record receipts and disbursements for treasury funds and for accounts within treasury funds, and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The controller shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

History: En. Sec. 6, Ch. 147, L. 1963.

79-415. Appropriation and disbursement of moneys from the treasury. (1) Moneys deposited in the general fund, the earmarked revenue fund, the revolving fund, and the federal and private revenue fund, with the exception of trust income, shall be paid out of the treasury only on appropriation made by law.

(2) Moneys deposited in the federal and private grant clearance fund, the sinking fund, the bond proceeds and insurance clearance fund, the trust and legacy fund and the agency fund may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

History: En. Sec. 7, Ch. 147, L. 1963.

79-416. Special funds abolished—transfer to general fund. The armory physical plant fund, post war planning and construction reserve fund, state fire insurance fund, Carey land act fund and photographers' license fund are abolished. All moneys in these funds are transferred to the general fund.

History: En. Sec. 239, Ch. 147, L. 1963.

Repealing Clause

Section 242 of Ch. 147, Laws 1963 read "Sections 79-103, 79-207, 79-401 through 79-408, 79-1008, 79-1204, 79-1205, 79-1210, 79-501 through 79-505, 3-203, 78-203 through 78-208, 78-401 through 78-416, 78-502, 78-601 through 78-620, 78-701 through 78-727, 78-728 through 78-736 enacted as sections 1 through 9, Chapter 248, Laws of 1957, 78-801 through 78-818, 78-908, 75-5102, 89-116.2, 89-403, 93-2021, 93-2022, 93-2025, 44-407, 3-2703, 46-241, 91-510, 91-511, 91-513, 66-2418, 81-2011, 81-2016, 81-2122, 81-2124, 46-2330, 60-139, 78-305, 78-306, 78-307, 78-308, 92-837, 11-2021, 4-231 and 80-115, 80-747, R. C. M. 1947, are repealed."

Separability Clause

Section 243 of Ch. 147, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 5—STATE HORTICULTURAL REVOLVING FUND—REVOLVING FUNDS OF DEPARTMENT OF AGRICULTURE

(Repealed—Section 242, Chapter 147, Laws of 1963)

79-501 to 79-505. (3634.1, 3634.2) **Repealed.**

Repeal

These sections (Secs. 1, 2, Ch. 144, L. 1925; Sec. 1, Ch. 51, L. 1927; Secs. 1 to 3, Ch. 227, L. 1951), relating to revolving funds of the department of agriculture, were repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 6—PERPETUAL APPROPRIATIONS FOR SUPPORT OF STATE INSTITUTIONS—CONTINGENT REVOLVING ACCOUNTS

Section 79-601. Support of state institutions.
79-602. Contingent revolving accounts—when established.
79-603. State institutions may retain certain moneys, when.

79-601. (194) **Support of state institutions.** For the support and endowment of each and every of the state institutions of the state of Montana now existing or hereafter to be created there is annually and perpetually appropriated respectively:

1. The income from all permanent endowments, and from all land grants as provided by law. All moneys received or collected by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except such as may have been heretofore pledged to secure the payment of principal and interest of bonds issued in connection with the construction of buildings, or which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

History: En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R. C. M. 1921; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "funds and" before "endowments" near the beginning of paragraph 1; deleted "and all such contributions as may be derived from public or private bounty" from the end of the first sentence of paragraph 1; deleted from paragraph 1 a former second sentence reading, "All such funds shall be kept by the state treasurer in specific fund accounts, so entitled as to clearly indicate their purposes and sources"; deleted "on or after July 1, 1941" after "received or collected" in the third sentence of paragraph 1; and substituted "the proper fund" for "the general fund of the state" at the end of the section.

79-602. (195) **Contingent revolving accounts—when established.** The state controller may authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, under specific regulations to be established by the state controller. But each and every state institution granted a contingent revolving account shall report to the state controller monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made

therefrom. The state controller may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R. C. M. 1921; amd. Sec. 9, Ch. 80, L. 1961.

Amendment

The 1961 amendment, in the beginning of the section, substituted the words "state controller may" for the words "state board of examiners may in its discretion, by resolution duly adopted and entered upon the minutes of said board"; and substituted the words "the state controller" each time they appear, for references to the state board of examiners.

79-603. (196) **State institutions may retain certain moneys, when.** The state controller may in his discretion permit any state institution to retain in its possession, under such conditions as the state controller may prescribe, incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise. The state controller may cancel such permission and require the deposit of any or all such funds with the state treasurer at his pleasure; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such funds and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in said depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R. C. M. 1921; amd. Sec. 2, Ch. 157, L. 1931; amd. Sec. 12, Ch. 147, L 1963.

Amendment

The 1963 amendment substituted "state controller" in three places for "state board of examiners" or "board"; deleted "by resolution duly adopted and entered upon the minutes of said board" after "may in his discretion" in the first sentence; and made minor changes in phraseology.

CHAPTER 8—MISCELLANEOUS POWERS AND DUTIES OF STATE TREASURER—SUSPENSION

Section 79-813. Sale of property in escheated estates—disposal of proceeds.

79-809. (188) **Repealed.**

Repeal

This section (Sec. 2, Ch. 141, L. 1907), relating to bonding of the state treasurer, was repealed by Sec. 51, Ch. 177, Laws 1965.

79-813. (197.1) **Sale of property in escheated estates—disposal of proceeds.** All stocks, bonds, securities, personal property, and effects now held or hereafter received by the state treasurer, and which belong to certain estates that have escheated to the state of Montana, shall be disposed of by the state treasurer at public auction at his office in the capitol. The state treasurer shall cause notice of such auction to be published in one (1) newspaper published in the city of Helena in two (2) issues during the period of two (2) weeks prior to such auction sale, stating the time and place of sale, and giving a list of all such stocks, bonds, securities, personal property and effects to be sold, reserving the right to reject any or all bids. The state treasurer shall credit the proceeds of such sale

to the proper fund, making proper accounting to the various estates of the amounts received.

History: En. Sec. 1, Ch. 58, L. 1931; amd. Sec. 13, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "proper fund" for "escheated estates fund" in the last sentence.

CHAPTER 9—EXPENDITURES BY STATE DEPARTMENTS IN EXCESS OF INCOME PROHIBITED

Section 79-901. State officers and institutions—limit on expenditures.
79-904. Penalty for violation of act.

79-901. State officers and institutions—limit on expenditures. It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state, or for any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or for the state board of examiners, or any supervisory board or authority either directly or indirectly to authorize, direct or order any such institution, officer, department, board, commission or bureau to increase any expenditures, except as specifically provided by law, and it shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income.

History: En. Sec. 1, Ch. 40, L. 1937; amd. Sec. 2, Ch. 82, L. 1961.

Amendment

The 1961 amendment after the words "provided for such year" deleted the phrase which read "or in excess of such income as decreased by the state board of examiners, under and in accordance with the provisions of section 79-903, for such year"; and after the words "increase any expenditures" substituted the words "except as specifically provided by law" for the words "except as hereinafter provided."

DECISIONS UNDER FORMER LAW

Control by Board of Examiners

Mandate was issued by the supreme court to compel state board of public welfare to present to the state board of examiners forthwith written application setting forth the circumstances confronting it with reference to the need for money to carry out the relief program in Silver Bow County and requesting authorization for expenditures to meet the relief requirements in Silver Bow County, Montana. State ex rel. Kidder v. Fouse, 137 M 483, 353 P 2d 755, 757.

79-902, 79-903. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 40, L. 1937; Sec. 1, Ch. 197, L. 1953), relating to emergency expenditures in excess of appropriations and decrease of expenditures on inspection of inventories, were repealed by Sec. 4, Ch. 82, Laws 1961.

79-904. Penalty for violation of act. Any authority or member of a board of trustees or any person, officer or employee violating the provisions of section 79-901, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty

dollars ($50.00) nor more than five hundred dollars ($500.00) or imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment; and in addition thereto, said authority, member, person, officer or employee, shall be personally liable, and the surety or sureties on his bond shall also be liable, to the state of Montana for the amount of the excess thus unlawfully expended, and said authority, member, person or officer shall be guilty of misfeasance in office, and such employee shall be guilty of wrongdoing and each shall be subject to removal from office or from such employment, upon complaint of any taxpayer, filed in a district court of this state, and upon proof of violation of this act, in accordance with law.

History: En. Sec. 4, Ch. 40, L. 1937; amd. Sec. 3, Ch. 82, L. 1961.

Amendment

The 1961 amendment after the reference section 79-901 deleted a reference to section 79-902.

Repealing Clause

Section 4 of Ch. 82, Laws 1961 read "Sections 79-902 and 79-903, Revised Codes of Montana, 1947, are repealed."

CHAPTER 10—STATE BUDGET ACT

Section 79-1011. Disposal of unexpended appropriations.
79-1012. Governor chief budget officer—appointment of budget director.
79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.
79-1014. Preliminary budget—preparation—submission to governor and governor-elect.
79-1015. Submission of budget to legislature—form—contents.
79-1016. Inquiries and investigations by budget director.
79-1017. Other duties of director.
79-1018. Power of director to demand and receive information from state departments, officers, etc.
79-1019. Authorization to expend during first year of biennium from appropriation for second year.

79-1002 to 79-1004. (295 to 297) Repealed.

Repeal

These sections (Secs. 2 to 4, Ch. 205, L. 1919; amd. Secs. 1, 2, Ch. 167, L. 1933; amd. Secs. 7, 8, Ch. 194, L. 1951; amd. Sec. 1, Ch. 155, L. 1955), relating to requests for annual appropriation by departments and other state agencies and institutions, were repealed by Sec. 11, Ch. 158, Laws 1959.

79-1004.1. Repealed.

Repeal

This section (Sec. 9, Ch. 194, L. 1951), relating to the examination of requests, was repealed by Sec. 11, Ch. 158, Laws 1959.

79-1005. (298) Repealed.

Repeal

This section (Sec. 5, Ch. 205, L. 1919; amd. Sec. 1, Ch. 163, L. 1921; amd. Sec. 3, Ch. 167, L. 1933; amd. Sec. 10, Ch. 194, L. 1951), relating to the budget and budget bill, was repealed by Sec. 11, Ch. 158, Laws 1959.

79-1008. (301) Repealed.

Repeal

This section (Sec. 8, Ch. 205, L. 1919), relating to supplementary appropriations, was repealed by Sec. 242, Ch. 147, Laws 1963.

79-1010. (303) **Repealed.**

Repeal

This section (Sec. 10, Ch. 205, L. 1919; amd. Sec. 2, Ch. 46, L. 1937), relating to printing and distribution of budget, was repealed by Sec. 11, Ch. 158, Laws 1959.

79-1011. (304) **Disposal of unexpended appropriations.** All moneys now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds and accounts from which originally appropriated; provided, however, that any unexpended balance in any specific appropriation may be used for either of said years for which such appropriation has been made.

History: En. Sec. 2, H. B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R. C. M. 1921; amd. Sec. 14, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted "and accounts" after "the several funds."

79-1012. Governor chief budget officer—appointment of budget director. The governor shall be the chief budget officer of the state and shall appoint a director of the budget, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out the provisions of this chapter.

History: En. Sec. 1, Ch. 158, L. 1959.

Title of Act

An act to make the governor the chief budget officer of the state, requiring the governor to prepare and present a budget message and balanced budget to each regular session of the legislative assembly; to establish the office of director of the budget and providing for the appointment of the director of the budget who shall hold office at the pleasure of the governor; requiring each department, state institution and agency to submit information requested by the director of the budget, providing that the director of the budget shall prepare a budget request for any department, institution or agency not submitting requested information; to provide for the preparation of a preliminary budget by the director of the budget; fixing the form and content of the budget and designating the items of revenue and expenditures which must be set forth and requiring a proposed budget bill and recommendations for new sources of revenue; granting to the governor-elect the right to make comments and recommendations to be incorporated in the budget; granting power to the director of the budget to investigate the items submitted to his office and to demand and receive requested information from every department, officer, board, commission, or institution; to amend sections 82-109, 82-110 and 82-112 of the Revised Codes of Montana, 1947; repealing sections 79-1002, 79-1003, 79-1004, 79-1004.1, 79-1005, and 79-1010, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information. In the preparation of a state budget the director of the budget shall not later than the first day of July in the year preceding the convening of the legislative assembly, distribute to all state offices and institutions, including the judicial department, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the director of the budget to procure such information as the director of the budget shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, estimates of revenues, actual revenues received, expenditures made and other information classified and grouped as requested by the director of the budget and covering such period or periods of time as specified by the director of the budget.

(a) Except as provided in this paragraph, it shall be the duty of each department and agency to submit information requested by the director of the budget on or before the first day of August in the year preceding the convening of the legislative assembly. Each unit of the university of Montana and each state custodial institution shall submit such information on or before the first day of September of such year.

(b) If any department, institution or agency shall fail to present such requested information within the time herein specified, the director of the budget shall note that fact in the budget submitted to the governor, and the director of the budget shall prepare a budget request on behalf of such department, institution or agency, based upon his studies of the operations, plans and needs thereof.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961.

Amendment

The 1961 amendment advanced the date for distribution of blanks from August 15 to July 1 and for return of budget information, as specified in paragraph (a), from September 15 to August 1; inserted the words "Except as provided in this paragraph" at the beginning of paragraph (a); deleted "state institution" following "department" in the first sentence of paragraph (a); and added the second sentence to paragraph (a).

79-1014. Preliminary budget—preparation—submission to governor and governor-elect. Upon receipt of the completed forms and other available data and information, the director of the budget shall examine the same for the purpose of determining the necessity of the expenditures and funds requested by appropriations and shall, on or before the first day of December in the year preceding the convening of the legislature, submit to the governor and to the governor-elect, if one there be, in writing, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in Part 2 of the budget to be submitted by the governor to the legislative assembly.

History: En. Sec. 3, Ch. 158, L. 1959.

79-1015. Submission of budget to legislature—form—contents. The governor shall, following the receipt of the preliminary budget from the director of the budget, have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislative assembly at the time of the convening of the legislative assembly. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, and shall be set up in three (3) parts, the nature and contents of which shall be as follows:

Part 1 shall consist of a budget message by the governor which shall outline the financial policy of the state government for the ensuing biennium and shall describe in connection therewith the important features of the financial plan; it shall also embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed expenditures and the total anticipated revenues together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The general budget summary shall be supported by explanatory schedules

or statements, classifying both expenditures and income contained therein by organization units, accounts and funds.

If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislative assembly without change, and it is the duty of the governor-elect in recommending changes to show a balance between proposed expenditures and anticipated revenue.

Part 2 shall set forth the detailed budget estimates, both of expenditures and revenues of each department, institution and agency of the state in the following manner:

1. The revenues from all sources including appropriations for each fiscal year of the last completed biennium, for the completed fiscal year of the current biennium, and appropriations and estimated revenue from other sources for the current fiscal year in progress. Revenue shall be classified by organization units, sources, accounts and funds.

2. Expenditures during each fiscal year of the last completed biennium, expenditures for the completed fiscal year of the current biennium and estimated expenditures for the current fiscal year in progress. These expenditures shall be classified by organization units, objects, accounts and funds.

3. The amount approved by the governor as necessary for the carrying on of the work of each department, office or institution itemized as to the purpose for each fiscal year of the ensuing biennium.

4. Statements of the bonded indebtedness of the state government showing the debt redemption requirements, the debt authorized and unissued and the condition of the sinking funds and accounts.

5. A statement of the cash balances on hand in each of the accounts and funds at the close of each of the two last completed fiscal years.

6. A statement containing further recommendations of the governor should he deem it necessary.

Part 3 shall include a proposed budget bill, authorizing by departments, institutions and agencies, by accounts and by funds, all expenditures for each fiscal year of the ensuing biennium, and must be accompanied by detailed and specific recommendations as to new sources of revenue, if necessary, to balance and to finance the budget. If recommendations for new sources of revenue are submitted, estimates of revenue to be realized from such new sources must also be submitted.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted "accounts" near the end of the second paragraph and near the ends of paragraphs 1 and 2; inserted "and accounts" at the end of paragraph 4; inserted "accounts and" in paragraph 5; and inserted "by accounts" after "institutions and agencies" in the first sentence of the final paragraph.

79-1016. Inquiries and investigations by budget director. The director of the budget shall make such further inquiries and investigations as he shall deem necessary as to any item included in the report and estimates furnished by any department, agency or institution. In making such investigations, he shall be allowed his necessary expenses of travel and subsistence as provided by law in visiting any institution or department

in the state. The director of the budget may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

History: En. Sec. 5, Ch. 158, L. 1959.

79-1017. Other duties of director. The director of the budget in addition to the duties hereinbefore set forth shall perform such other duties as the governor as chief budget officer of the state may direct. He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislative assembly, the receipts from sources other than appropriations, and expenditures made by any department, office or institution of the state. The director of the budget shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance and claims and shall furnish to such committees any information required while said committees are considering the budget.

History: En. Sec. 6, Ch. 158, L. 1959.

79-1018. Power of director to demand and receive information from state departments, officers, etc. The director of the budget shall have power to demand and receive from every department, officer, board, commission, or institution, including the state controller, at any time, any and all information requested by the director of the budget.

History: En. Sec. 7, Ch. 158, L. 1959.

79-1019. Authorization to expend during first year of biennium from appropriation for second year. A state department, institution or agency of the executive branch desiring authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium, shall make application for such authorization to the governor through the director of the budget. If the the governor finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium, with all other income, will be insufficient, for the operation and maintenance of said department, institution or agency during the year for which the appropriation was made, he may, after careful study and examination of the request and upon review of the recommendation of the director of the budget, authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. The department, institution or agency may expend the amount authorized by the governor only for the purposes specified in the authorization. The governor shall report to the next legislative assembly, in a special section of the budget, the amounts expended as a result of all such authorizations granted by him, and shall request that any necessary supplemental appropriation bills be passed.

History: En. Sec. 1, Ch. 82, L. 1961.

Title of Act

An act to provide that the governor may authorize an expenditure during the fiscal year of the biennium from the appropriation for the second fiscal year of the biennium if he finds that the amount actually appropriated for the first fiscal year of the biennium is in-

sufficient due to an unforeseen and unanticipated emergency; to amend section 79-901, Revised Codes of Montana, 1947, by deleting reference to the board of examiners' power to decrease appropriations; to amend section 79-904 by deleting reference to section 79-902; and to repeal sections 79-902 and 79-903, Revised Codes of Montana, 1947.

CHAPTER 12—MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

Section 79-1202. Moneys to be invested according to unified plan.
79-1203. Departments to request investment of moneys according to unified investment plan.
79-1206. Investment of moneys—supreme court supervision—duty of land commissioners.
79-1208. Treasurer's account of funds.
79-1211. Annual transfer of interest collected.
79-1212. Payments from Montana trust and legacy fund.
79-1213. Payments made on order of board—annual statement of treasurer.
79-1214. Limitation on payment from treasury.

79-1202. (5668.20) **Moneys to be invested according to unified plan.** 1. The state board of land commissioners is hereby authorized and required to invest the Montana trust and legacy fund subject to the provisions, regulations and limitations of sections 81-1001 to 81-1008, inclusive.

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: Moneys administered by the Montana highway patrolmen's retirement board in excess of twenty-five thousand dollars ($25,000.00); moneys administered by the public employees' retirement board; moneys administered by the industrial accident board; all moneys subject to investment as designated by the teachers' retirement board; moneys designated as available by the Montana fish and game commission and all other moneys designated by statute. Moneys in the long term investment fund may be invested as follows:

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government.

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks; in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings; in bonds or other securities which may be issued for the construction of a physical education building at the state industrial school, provided that sufficient income from fees collected under section 80-816 shall be pledged for the retirement of such bonds or other securities; in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, the retirement fund, or upon the bridge fund of the several counties and school districts of

the state of Montana; the purchase of all such investments to be subject to the discretion of the board.

(c) In the obligations, and/or stock where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government;

(1) Commodity credit corporation.

(2) Federal intermediate credit banks.

(3) Federal land banks.

(4) Central bank for co-operatives.

(5) Federal home loan banks, and stock thereof.

(6) Federal national mortgage association, and stock thereof when acquired in connection with sale of mortgage loans to such association.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of fifty per centum (50%) or more of the loan made in the event of default by the United States government or any agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, provided, however, no more than fifty per centum (50%) of the funds in one (1) account shall be invested in such mortgages.

(e) In first mortgage bonds, debentures, notes and other evidences of indebtedness issued, assumed or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes and other evidences of indebtedness are, at the time of such investment, within the three (3) highest quality grades for the rating of such bonds, debentures, notes and other evidences of indebtedness by any nationally recognized investment rating agency.

(f) In equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of such transportation equipment, and which obligations or certificates are, at the time of such investment, within the three (3) highest quality grades for the rating of such obligations or certificates by any nationally recognized investment rating agency.

All securities purchased and all cash on hand for each fund shall be kept separate in the long term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in the sinking fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any Montana highway patrolmen's retirement moneys less than twenty-five thousand dollars ($25,000.00) as

directed by the Montana highway patrolmen's retirement board and any other moneys designated by statute to be so invested or any moneys in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which moneys is requested by the officer, or officers or governing body and which moneys are subject to investment. The moneys in the short term investment fund may be invested as follows:

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury obligations shall be credited to the general fund of the state of Montana.

(b) Any sinking fund and any other moneys may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, and in interest-bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys in the sinking fund shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for the payment of principal and interest.

All securities purchased and all cash on hand for each account or subfund shall be kept separate in the short term investment fund and all interest collected shall be credited to the account or subfund for which the securities were purchased.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field and there shall not be paid for such services an amount in excess of one thousand dollars ($1,000.00) in any one fiscal year.

History: En. Sec. 2, Ch. 70, L. 1929; amd. Sec. 8, Ch. 176, L. 1953; amd. Sec. 1, Ch. 118, L. 1957; amd. Sec. 1, Ch. 173, L. 1959; amd. Sec. 1, Ch. 67, L. 1963; amd. Sec. 16, Ch. 147, L. 1963; amd. Sec. 1, Ch. 256, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 67, once by Ch. 147, and once by Ch. 256. None of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all three amendments.

Amendments

The 1957 amendment in subd. 2(d) raised the per cent of funds in one account that can be invested in mortgages from 40% to 50%.

The 1959 amendment in subd. 2(b) inserted the words "in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building, upon land adjacent to the capitol buildings."

Chapter 67, Laws 1963, inserted "the retirement fund" in the latter part of subd. 2 (b); inserted "and school districts" after "bridge fund of the several counties" near the end of subd. 2 (b); substituted present subd. 2 (c) for a clause reading, "(c) In debentures issued by the federal housing administrator, and in obligations of national mortgage associations"; inserted subds. (e) and (f) of subsection 2; and made a separate paragraph (the final paragraph of subsection 2) of the former final sentence of subd. 2 (d).

Chapter 147, Laws 1963, deleted a former first sentence of subd. 1 which read, "The state board of land commissioners is

hereby authorized and required to invest as part of the Montana trust and legacy fund the following: The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions of learning, subject to investment; the escheated estates fund, meaning all of the various sums paid over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfully constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long term investment not legally in the custody of any lawfully constituted board or the investment of which has not been designated by statute"; substituted "The state board of land commissioners is hereby authorized and required to invest" at the beginning of subd. 1 for "Moneys in the Montana trust and legacy fund shall be invested"; substituted "Moneys administered by the Montana highway patrolmen's retirement board" in the preliminary paragraph of subd. 2 for "That part of the Montana highway patrolmen's retirement fund"; substituted "moneys administered by the public employees' retirement board" in the preliminary paragraph of subd. 2 for "the public employees' retirement fund"; substituted "moneys administered by the industrial accident board" in the preliminary paragraph of subd. 2 for "the industrial accident reserve fund"; substituted "moneys" for "funds" in the preliminary paragraph of subd. 2 in the clause pertaining to teachers' retirement; substituted "moneys" for "that part of the fish and game fund" in the preliminary paragraph of subd. 2 in the clause pertaining to the fish and game commission; substituted "moneys" for "funds" or "fund" near the end of the first sentence of the preliminary paragraph of subd. 2, six places in the preliminary paragraph of subd. 3, and before "may be invested" in paragraph 3 (b); substituted "the sinking fund" or "Any sinking fund" for "any state bond sinking and interest fund" in the preliminary paragraph of subd. 3, and for "any sinking and interest fund" at the beginning of paragraph 3 (b) and in the proviso to paragraph 3 (b); deleted from the preliminary paragraph of subd. 3 a clause which preceded the clause pertaining to highway patrolmen's retirement moneys and read, "any educational bond interest and sinking fund"; deleted from the end of paragraph 3 (b) the words "of the obligations for which the sinking and interest fund was created"; substituted "account or subfund" for "fund" in two places in the paragraph following paragraph 3 (b); and made minor changes in phraseology.

Chapter 256, Laws 1963, inserted the words "in bonds or other securities which may be issued for the construction of a physical education building at the state industrial school, provided that sufficient income from fees collected under section 80-816 shall be pledged for the retirement of such bonds or other securities" in paragraph 2 (b).

Repealing Clauses

Section 2 of Ch. 118, Laws 1957; Sec. 2 of Ch. 173, Laws 1959 and Sec. 2 of Ch. 67, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 173, Laws 1959 provided the act should be in effect from and after its date of passage and approval. Approved March 7, 1959.

Section 3 of Ch. 67, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 25, 1963.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

79-1203. (5668.21) **Departments to request investment of moneys according to unified investment plan.** Except as otherwise provided, any department of the government of the state of Montana, state board, commission, bureau, institution, office or officer, which has under its or his administration any moneys subject to investment, must have such moneys or any part thereof subject to investment invested by the state

board of land commissioners as part of the Montana trust and legacy fund, the long term investment fund or the short term investment fund depending on the nature of the moneys and the time when the principal invested may be required for the purpose for which it was accumulated. The said board is hereby authorized and required to invest and administer the moneys for which such request has been made.

History: En. Sec. 3, Ch. 70, L. 1929; amd. Sec. 9, Ch. 176, L. 1953; amd. Sec. 17, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "moneys" for "fund" in four places; and deleted "or part of fund" before "for which such request has been made" at the end of the section.

79-1204, 79-1205. (5668.22, 5668.23) **Repealed.**

Repeal

These sections (Secs. 4, 5, Ch. 70, L. 1929), relating to transfers to the trust and legacy fund, were repealed by Sec. 242, Ch. 147, Laws 1963.

79-1206. (5668.24) **Investment of moneys—supreme court supervision—duty of land commissioners.** All moneys invested as the Montana trust and legacy fund as provided in article XXI of the constitution, shall be invested as one (1) common fund and shall be invested in the same kinds of securities as the constitution and the statutes prescribe for the investment of the other moneys under the administration of the state board of land commissioners, and also subject to the special limitations of the said article XXI. The entire investment of the Montana trust and legacy fund shall be subject to the supervision of the justices of the supreme court as provided in section 17 of the said article. The commissioner of state lands and investments shall perform the same duties and exercise the same powers with regard to the investment administration of the moneys under the unified investment plan as he performs with regard to the other investments made by the state board of land commissioners.

History: En. Sec. 6, Ch. 70, L. 1929; amd. Sec. 10, Ch. 176, L. 1953; amd. Sec. 18, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "moneys" for "funds" in three places.

79-1208. (5668.26) **Treasurer's account of funds.** The state treasurer shall keep separate each account and subfund which is invested and administered according to the unified investment plan and shall also keep an account of the total of each investment fund and of all the investments belonging to such fund.

History: En. Sec. 8, Ch. 70, L. 1929; amd. Sec. 11, Ch. 176, L. 1953; amd. Sec. 19, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "keep separate each account and subfund" for "keep a separate account to be designated by name and number for each and every fund"; substituted "each investment fund" for "such fund"; and deleted the former second and third sentences, for text of which see parent volume.

79-1210. (5668.28) **Repealed.**

Repeal

This section (Sec. 10, Ch. 70, L. 1929), relating to the transfer of accrued interest, was repealed by Sec. 242, Ch. 147, Laws 1963.

79-1211. (5668.29) **Annual transfer of interest collected.** On the last day of December each year the interest collected shall be credited pro

rata to each and every subfund then constituting the Montana trust and legacy fund that was in the keeping of the state on January, based on the total thereof on that date, and shall be added to each such subfund, or held available for payment, according to the provisions of article XXI of the constitution and of the statutes and other valid provisions applicable thereto. If any subfund is larger or smaller on December 31, than on January 1 of the same year, then the average of the amounts on these two (2) dates shall be the basis for calculating the interest to be credited to that subfund. The interest on all other subfunds shall be credited to each subfund as earned by each such subfund.

History: En. Sec. 11, Ch. 70, L. 1929; amd. Sec. 13, Ch. 176, L. 1953; amd. Sec. 20, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "subfund" or "subfunds" for the words "fund" or "funds" in seven places.

79-1212. (5668.30) **Payments from Montana trust and legacy fund.** The principal, and any part thereof, of each and every subfund constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the constitutional and statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular subfund arises.

History: En. Sec. 12, Ch. 70, L. 1929; amd. Sec. 21, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the word "subfund" for "fund" in two places; and deleted a second sentence reading: "Both payments of interest earnings and payments of principal shall be made upon warrants duly issued by the state auditor under orders received by him from the authorities having the legal control of the use of the various funds."

79-1213. (5668.31) **Payments made on order of board—annual statement of treasurer.** Whenever any payment is required to be made of interest or principal from any fund administered according to the unified investment plan, which payment is not subject to the order of any department of the government of the state, state board, commission, bureau, institution, office or officer, other than the state board of land commissioners, the state treasurer shall send a statement in duplicate to such board of the payment or payments to be made showing all essential facts relating thereto. The board shall then issue orders for warrants to be drawn for all payments approved by it.

During January of each year and at such other times as may be required the state treasurer shall submit to the board a statement covering all such interest payments to be made for the preceding year and all such payments from principal to be made at that time giving all necessary information relating thereto. The board shall then issue orders for warrants to be drawn for all payments approved by it.

History: En. Sec. 13, Ch. 70, L. 1929; amd. Sec. 14, Ch. 176, L. 1953; amd. Sec. 22, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "any fund" for "any endowment fund or other fund" in the first sentence of the first paragraph; deleted "or as required by the nature of the fund involved" after "preceding year" in the first sentence of the second paragraph; and, in the last sentences in both paragraphs substituted "orders for warrants to be drawn" for "orders upon the state auditor to issue warrants."

79-1214. (5668.32) **Limitation on payment from treasury.** No order or warrant shall ever be issued upon any subfund, account or fund for a larger amount than the sum total of the particular subfund, account or fund to which it applies, and if such order or warrant is issued, the state treasurer shall refuse to pay the same and, in the case of subfunds, accounts or funds for which the treasurer maintains balances, he shall be personally liable under his official bond for the entire overdraft resulting from such payment if made.

History: En. Sec. 14, Ch. 70, L. 1929; amd. Sec. 15, Ch. 176, L. 1953; amd. Sec. 23, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "subfund, account or fund" for the words "fund" and "funds" in two places; and inserted "in the case of subfunds, accounts or funds for which the treasurer maintains balances, he" before "shall be personally liable."

CHAPTER 13—POST WAR PLANNING AND CONSTRUCTION RESERVE FUND

(Repealed—Section 1, Chapter 55, Laws of 1959)

79-1301 to 79-1308. Repealed.

Repeal

These sections (Secs. 1 to 8, Ch. 148, L. 1945), relating to the post war planning and construction reserve fund, were repealed by Sec. 1, Ch. 55, Laws 1959.

CHAPTER 14—INVESTMENT INCOME OF STATE INSTITUTIONS

Section 79-1401. Monthly deposit of moneys received from permanent grants of state educational institutions.
79-1402. Disbursement of said funds.
79-1403. Income and interest moneys to be first exhausted in payment of claims.

79-1401. (1922) **Monthly deposit of moneys received from permanent grants of state educational institutions.** All moneys received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall, at the close of each calendar month, be deposited with the state treasurer of Montana for each of such institutions, to the credit of the federal and private revenue fund.

History: En. Sec. 1, Ch. 120, L. 1909; re-en. Sec. 1922, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1961; amd Sec. 24, Ch. 147, L. 1963.

Amendments

The 1961 amendment substituted the words "a state institution" for a phrase which read "the university of Montana, the agricultural college of Montana, school of mines of Montana, state normal school of Montana, state reform school of Montana, and deaf and dumb school of Montana" and for the words "said institutions."

The 1963 amendment substituted "grants" for "the permanent funds" near the beginning of the section, and substituted "the federal and private revenue fund" for "what shall be known and designated as the 'interest and income fund' of each of said institutions" at the end of the section.

79-1402. (1923) **Disbursement of said funds.** The money received by the state treasurer under the provisions of the preceding section shall be paid out by him only on warrant issued by the state auditor in pay-

ment of claims for expenses actually incurred for the support and maintenance of the institution filing the same.

History: En. Sec. 2, Ch. 120, L. 1909; re-en. Sec. 1923, R. C. M. 1921; amd. Sec. 2, Ch. 89, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section a clause which read "and the state auditor shall not draw warrants on said interest and income funds for any such claims until after the claim has been duly filed with and audited and approved by the state board of examiners."

79-1403. (1924) **Income and interest moneys to be first exhausted in payment of claims.** In the payment of claims presented by a state institution entitled to interest and income from land grants or moneys arising therefrom, no warrant shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim until interest and income moneys, insofar as they are available for the payment of the items in the claim, are exhausted.

History: En. Sec. 3, Ch. 120, L. 1909; re-en. Sec. 1924, R. C. M. 1921; amd. Sec. 3, Ch. 89, L. 1961; amd. Sec. 25, Ch. 147, L. 1963.

Amendments

The 1961 amendment completely rewrote and rearranged the language. For section prior to amendment, see parent volume.

The 1963 amendment substituted "moneys" for "funds" or "fund" in two places; and made minor changes in phraseology.

Repealing Clause

Section 4 of Ch. 89, Laws 1961 read "Sections 79-1404 and 79-1405, Revised Codes of Montana, 1947, are repealed."

79-1404. (1925) **Repealed.**

Repeal

This section (Sec. 4, Ch. 120, L. 1909), relating to quarterly statement of expenses and disbursements made on account of federal funds, was repealed by Sec. 4, Ch. 89, Laws 1961.

79-1405. (1926) **Repealed.**

Repeal

This section (Sec. 5, Ch. 120, L. 1909), relating to biennial statement of receipts and expenditures of state educational institutions, was repealed by Sec. 4, Ch. 89, Laws 1961.

CHAPTER 18—GENERAL REFUNDING ACT APPLICABLE TO ALL OUTSTANDING BONDS

Section 79-1802. Character of bonds—amortization or serial.

79-1802. Character of bonds—amortization or serial. All refunding bonds or debentures issued by the state board of examiners under the provisions of this act shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the state board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semi-annual payments due thereon, which coupons shall bear the signature of each member of the state board of examiners. The state board of examiners shall prescribe all other details for the form of the bonds or

debentures, notice and time of sale. They shall be registered in the office of the state treasurer in a book to be provided for that purpose.

History: En. Sec. 2, Ch. 5, L. 1945; amd. Sec. 11, Ch. 260, L. 1959.

Amendment

The 1959 amendment substituted "bear the signature of each member" for "shall be signed by the members" and substituted "shall bear the signature" for "may be signed with the facsimile signature."

CHAPTER 19—REVENUE BOND REFINANCING ACT OF 1937

Section 79-1905. Terms of refunding bonds.

79-1905. Terms of refunding bonds. The refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities" at the end of the section for "negotiable instruments for all purposes."

CHAPTER 20—BOND VALIDATING ACT

Section 79-2001. Short title of act.
79-2002. Definitions.
79-2003. Validation of bonds heretofore issued.
79-2004. Act does not apply to pending actions.

79-2001. Short title of act. This act may be cited as "The 1965 Bond Validating Act."

History: En. Sec. 1, Ch. 75, L. 1965.

Compiler's Note

Chapter 75 of Laws 1965 was substituted for Ch. 100, Laws 1963 and given the same section numbers as it is almost identical with the 1963 law. Other similar laws that have been previously published here include: Laws 1955, Ch. 5; Laws 1957, Ch. 4; Laws 1959, Ch. 16; Laws 1961, Ch. 19.

Title of Act

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described, and providing that this act may be cited as "The 1965 Bond Validating Act"; containing a repealing clause and providing an effective date.

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History: En. Sec. 2, Ch. 75, L. 1965.

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

History: En. Sec. 3, Ch. 75, L. 1965.

79-2004. Act does not apply to pending actions. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1965, in which the validity of any such proceedings or of any such bonds is at issue.

History: En. Sec. 4, Ch. 75, L. 1965.

Repealing Clause

Section 5 of Ch. 75, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 75, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

CHAPTER 21—FLOOD CONTROL FUNDS—DISPOSAL

Section 79-2101. Moneys received from federal government under flood control act—distribution to counties.
79-2102. Expenditure of funds by counties.

79-2101. Moneys received from federal government under flood control act—distribution to counties. All moneys received or hereafter to be received by the state of Montana from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under title thirty-three (33) United States Code annotated section 701-c-3, or which are now held in suspense accounts within the state of Montana, shall be distributed by the state to the county treasurers of the counties of the state of Montana wherein the flood control land is situated.

History: En. Sec. 1, Ch. 156, L. 1959.

Title of Act

An act relating to the distribution of moneys received by the state of Montana under and by virtue of the Flood Control Act of 1954 under title thirty-three (33) United States Code annotated section 701-c-3; providing for the distribution of such moneys by the state to the counties of Montana wherein such flood control land is situated; providing the counties receiving such moneys shall expend fifty per cent (50%) thereof for the benefit of the county common schools in the county wherein such flood control land is situated and fifty per cent (50%) thereof for the benefit of the general public roads in the county wherein such flood control land is situated; providing and designating the funds into which such moneys shall be distributed by the county concerned; providing for a repealing clause; and providing for an effective date of this act.

79-2102. Expenditure of funds by counties. All moneys received or to be received by the county treasurers of the counties of the state of Montana wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund, and shall be expended as follows:

Fifty per cent (50%) of all moneys received or to be received shall be expended for the benefit of the county common schools in the county concerned, and fifty per cent (50%) of all moneys received or to be received shall be expended for the benefit of the general public roads in the county concerned.

History: En. Sec. 2, Ch. 156, L. 1959.

Repealing Clause

Section 3 of Ch. 156, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 156, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

CHAPTER 22—LONG-RANGE BUILDING PROGRAM BONDS

Section 79-2201. Definitions and establishment of funds.
79-2202. Long-range building program bonds.
79-2203. Sinking fund account.
79-2204. Waiver of security provisions.
79-2205. Authorization of bonds.

79-2201. Definitions and establishment of funds. (1) Long-range building program means and includes all buildings, structures and facilities to be constructed, repaired, used, equipped or furnished and land to be acquired therefor with the consent of the legislative assembly in accordance with R. C. M. 1947, sections 82-3314 to 82-3318, inclusive.

(2) Long-range building program bonds mean and include all series of bonds issued as authorized in section 2 [79-2202] to finance any portion of the long-range building program.

(3) Sinking fund account means a separate long-range building program subfund which is created within the sinking fund established in R. C. M. 1947, section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay long-range building program bonds and interest thereon when due, so long as any such bonds or interest remain unpaid.

(4) Clearance fund account means a separate long-range building program subfund which is created within the bond and insurance clearance fund established in R. C. M. 1947, section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program, upon order of the controller acting within the limits of the authority conferred upon him by the legislative assembly.

(5) Board, controller and treasurer mean the state board of examiners, state controller and state treasurer, respectively.

History: En. Sec. 1, Ch. 276, L. 1965.

Title of Act

An act providing revenue for the long-range building program; providing for the issuance and sale of bonds to finance said program, payable solely from special nonproperty taxes pledged to a special sinking fund account; pledging and appropriating portions of the income tax, corporation license tax, and excise taxes on cigarettes; and amending section 84-1901, R. C. M. 1947.

79-2202. Long-range building program bonds. (1) When authorized by the legislative assembly, and within the limits of such authorization and the further limitations in this section, the board may issue and sell bonds of the state of Montana in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. All bonds issued hereunder shall contain a statement that they are not and shall never become a debt or liability of the state of Montana within the meaning of any constitutional or statutory limitation or provision, and that no ad valorem tax may be levied upon property within the state of Montana to pay principal thereof or interest thereon, but that the bonds and interest are payable solely from the proceeds of special taxes pledged and appropriated to the sinking fund account as provided in this chapter, and shall contain the pledge of the state of Montana to continue to levy and collect said special taxes and to apply the proceeds thereof to the retirement of said bonds and the payment of interest thereon.

(2) Each series of such bonds shall be issued by the board upon request of the controller, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates not exceeding five per centum (5%) per annum, maturing at such times not exceeding thirty (30) years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of

the state of Montana, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds, the amount, maturities and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on all such bonds then outstanding and on the series so to be issued will not exceed fifty per centum (50%) of the average annual amount collected during the three (3) then next preceding fiscal years, from the special taxes pledged by law to the sinking fund account at the time of such issuance.

(4) In all other respects the board is authorized to prescribe the form and terms of the bonds, and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the state board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder shall be deposited in the clearance fund account, except that any premiums and accrued interest received shall be deposited in the sinking fund account.

History: En. Sec. 2, Ch. 276, L. 1965.

79-2203. Sinking fund account. (1) From and after the pledge and appropriation of any special tax to the sinking fund account, as provided and contemplated in this section, such tax shall continue in force and shall be available and shall be irrevocably pledged and appropriated for the payment of long-range building program bonds, and all money received from the collection thereof shall be deposited by the treasurer to the credit of the sinking fund account, so long as any of such bonds or the interest thereon remains unpaid.

(2) Money in the sinking fund account shall be used first to pay interest and principal when due on long-range building program bonds; second to accumulate a reserve in the amount required below, for the further security of such payments; and third to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(3) Money at any time received in the sinking fund account in excess of the principal, interest and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the sinking fund account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account, and from any other collections of taxes appropriated to the general fund, not exceeding the aggre-

gate amount theretofore transferred from the sinking fund account to the general fund, and not including ad valorem taxes on property.

(4) The state reserves the power, by enactment of the legislative assembly or the people, to levy, impose and assess and to pledge and appropriate to the sinking fund account any tax specially designated therefrom, except an ad valorem tax on property, or any specified amount or percentage of the collections of such special tax, provided that this power shall not be construed to constitute a pledge of the general credit of the state of Montana. The state also reserves the power to appropriate any funds designated by enactment of the legislative assembly or the people for the redemption and prepayment of any long-range building program bonds, or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstandings bonds. Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in subsection (3) of section 2 [79-2202], substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded. Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the sinking fund account, to provide funds for payment of principal or interest due on long-range building program bonds, when and if and to the extent that the sinking fund account is insufficient for this purpose.

(5) The state hereby pledges and appropriates, and directs to be credited as received to the sinking fund account, five per centum (5%) of all money received from the collection of the income tax and the corporation license tax referred to in section 84-1901, R. C. M. 1947, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section 3 [79-2203]; provided that no more than five per centum (5%) of such tax collections shall be deemed to be pledged for the purpose of subsection (3) of section 2 [79-2202]. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(6) After approval through initiative or referendum by a majority of the electors voting at an election prior to January 1, 1967, the state upon such approval also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes and other tobacco products which are levied, imposed and assessed by section 84-5606, subdivisions (3) and (4), R. C. M. 1947, as amended, after the payment and redemption in full of the outstanding bonds for which any such tax has heretofore been pledged and appropriated.

History: En. Sec. 3, Ch. 276, L. 1965.

79-2204. Waiver of security provisions. If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by

their purchase and redemption of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this act.

History: En. Sec. 4, Ch. 276, L. 1965.

79-2205. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding thirteen million five hundred thousand dollars ($13,500,000), upon the conditions and in the manner stated in this chapter.

History: En. Sec. 5, Ch. 276, L. 1965.

TITLE 80—STATE INSTITUTIONS

Chapter 1. Montana state school for the deaf and blind, 80-108.
2. Montana state tuberculosis sanitarium, Repealed—Section 101, Chapter 199, Laws of 1965.
3. Veterans' home, Repealed—Section 101, Chapter 199, Laws of 1965.
4. Farmers' institutes, Repealed—Section 1, Chapter 190, Laws of 1959.
6. State bureau of criminal identification, Repealed—Section 101, Chapter 199, Laws of 1965.
7. The state prison, Repealed—Section 101, Chapter 199, Laws of 1965.
8. Montana state industrial school, Repealed—Section 101, Chapter 199, Laws of 1965.
9. State vocational school for girls, Repealed—Section 101, Chapter 199, Laws of 1965.
10. Admission of females to reformatory institutions, Repealed—Section 101, Chapter 199, Laws of 1965.
11. Miscellaneous provisions applicable to state institutions, Repealed—Section 101, Chapter 199, Laws of 1965.
12. State department of public institutions, Repealed—Section 101, Chapter 199, Laws of 1965.
13. Collection of costs of support of inmates and patients, Repealed—Section 101, Ch. 199, Laws of 1965.
14. State department of institutions, 80-1401 to 80-1409.
15. Institutional industries, 80-1501 to 80-1503.
16. Payments for the care of residents of institutions, 80-1601 to 80-1604.
17. State pulmonary disease hospital, 80-1701 to 80-1703.
18. Montana veterans' home, 80-1801 to 80-1804.
19. State prison, 80-1901 to 80-1908.
20. State bureau of criminal identification and investigation, 80-2001 to 80-2006.
21. Montana children's center, 80-2101 to 80-2107.
22. State vocational school for girls and state industrial school, 80-2201 to 80-2213.
23. State training school and hospital, 80-2301 to 80-2309.
24. Division of mental hygiene—state hospital, 80-2401 to 80-2404.
25. Montana center for the aged, 80-2501 to 80-2503.

CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section 80-108. Admission of nonresident children and advance payment of cost—Indian children.

80-103. Objects and purposes of institution.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

80-108. Admission of nonresident children and advance payment of cost—Indian children. Deaf and blind children, who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state; provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state. Indian children who are wards of the United States and Montana residents shall be eligible to, and shall be admitted to such school on the same terms as residents. The school for the deaf and blind is hereby au-

thorized to collect reimbursement from the United States government for expenses incurred in providing services for Indian children who are wards of the United States government.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957.

Amendment

The 1957 amendment inserted the words "and Montana residents" in the second sentence and substituted a period and the third sentence for a former proviso clause of the second sentence which read "provided, however, that the school for the deaf and blind children shall make claim to and be entitled to receive reimbursement from the United States government for the care of such Indian children who are wards on the same basis and at the same rate as charges are made to nonresidents admitted to said school."

Repealing Clause

Section 2 of Ch. 182, Laws 1957 repealed all acts and parts of acts in conflict therewith.

80-115. Repealed.

Repeal

This section (Sec. 13, Ch. 182, L. 1943), relating to the deaf and blind school fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 2—MONTANA STATE TUBERCULOSIS SANITARIUM

(Repealed—Section 2, Chapter 189, Laws of 1959; Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

80-201. (1511) Repealed.

Repeal

This section (Sec. 1, Ch. 125, L. 1911; Sec. 1, Ch. 94, L. 1961), establishing the State Tuberculosis Sanitarium, was repealed by Sec. 101, Ch. 199, Laws 1965. For new law, see sec. 80-1701.

80-202 to 80-205. (1512 to 1515) Repealed.

Repeal

These sections (Secs. 2 to 5, Ch. 125, L. 1911), relating to the executive board of the sanitarium and to selection of a site for and construction of the sanitarium, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-206, 80-207. (1516, 1517) Repealed.

Repeal

These sections (Secs. 6, 7, Ch. 125, L. 1911; Secs. 47, 48, Ch. 266, L. 1963), relating to the superintendent of the State Tuberculosis Sanitarium, were repealed by Sec. 101, Ch. 199, Laws 1965. For new law, see secs. 80-1406 and 80-1702.

80-208. (1518) Repealed.

Repeal

This section (Sec. 8, Ch. 125, L. 1911), relating to the secretary and treasurer of the state tuberculosis sanitarium, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-209. (1519) Repealed.

Repeal

This section (Sec. 9, Ch. 125, L. 1911; Sec. 49, Ch. 266, L. 1963), relating to medical assistants and examining physicians for the State Tuberculosis Sanitarium, was repealed by Sec. 101, Ch. 199, Laws 1965.

80-210. (1520) Repealed.

Repeal

This section (Sec. 10, Ch. 125, L. 1911; Sec. 1, Ch. 26, Ex. L. 1919; Sec. 1, Ch. 4, L. 1927; Sec. 1, Ch. 142, L. 1953), relating to the admission of patients to the sanitarium, was repealed by Sec. 2, Ch. 189, Laws 1959, effective March 7, 1959.

80-210.1. Repealed.

Repeal

This section (Sec. 1, Ch. 189, L. 1959; Sec. 2, Ch. 94, L. 1961; Sec. 50, Ch. 266, L. 1963), relating to admission of patients to the State Tuberculosis Sanitarium, was repealed by Sec. 101, Ch. 199, Laws 1965.

80-211 to 80-213. (1521 to 1523) Repealed.

Repeal

These sections (Secs. 11 to 13, Ch. 125, L. 1911; Sec. 1, Ch. 186, L. 1921), relating to support of patients at the sanitarium, were repealed by Sec. 10, Ch. 213, Laws 1963. Sections 51 to 53, Ch. 266, Laws 1963, purported to amend these sections; however, under the rule of section 43-515, the purported amendments were void and did not revive the sections.

80-214. (1524) Repealed.

Repeal

This section (Sec. 14, Ch. 125, L. 1911), relating to the duties of the state board of examiners with respect to the sanitarium, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-215. (1525) Repealed.

Repeal

This section (Sec. 15, Ch. 125, L. 1911), relating to gifts to the State Tuberculosis Sanitarium, was repealed by Sec. 101, Ch. 199, Laws 1965.

80-216, 80-217. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 76, L. 1947), relating to a land grant for a sanitarium for Indians, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 3—VETERANS' HOME

(Repealed—Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965)

80-301. (1526) Repealed.

Repeal

This section (Sec. 1, p. 93, L. 1897), relating to federal aid to the veterans' home, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-302, 80-303. (1527, 1528) Repealed.

Repeal

These sections (Sec. 2510, Pol. C. 1895; Sec. 1, p. 93, L. 1897; Sec. 13, Ch. 266, L. 1963), establishing the veterans' home and relating to the acceptance and disbursement of money therefor, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-1801 and 80-1804.

80-304 to 80-307. (1529 to 1532) Repealed.

Repeal

These sections (Secs. 2511 to 2514, Pol. C. 1895; Secs. 1284 to 1287, Rev. C. 1907; Sec. 1, Ch. 23, L. 1909; Sec. 1, Ch. 20, L. 1911; Secs. 1529 to 1532, R. C. M. 1921; Sec. 1, Ch. 149, L. 1925; Sec. 1, Ch. 82, L. 1949), relating to the board of managers of the veterans' home, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-308. (1533) Repealed.

Repeal

This section (Sec. 2515, Pol. C. 1895; Sec. 2, Ch. 23, L. 1909; Sec. 1, Ch. 126, L. 1925; Sec. 1, Ch. 156, L. 1931; Sec. 2, Ch. 82, L. 1949; Sec. 1, Ch. 118, L. 1955; Sec. 14, Ch. 266, L. 1963), relating to officers and employees of the veterans' home, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1802.

80-309. (1534) Repealed.

Repeal

This section (Sec. 2516, Pol. C. 1895), relating to records of the board of managers, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-310, 80-311. (1535, 1536) Repealed.

Repeal

These sections (Sec. 1, p. 50, L. 1899; Sec. 1, Ch. 87, L. 1903; Sec. 1, Ch. 93, L. 1913; Sec. 1, Ch. 41, L. 1919; Sec. 2, Ch. 126, L. 1925; Sec. 1, Ch. 60, L. 1931; Sec. 1, Ch. 12, L. 1935; Sec. 1, Ch. 81, L. 1945; Sec. 3, Ch. 82, L. 1949; Sec. 1, Ch. 154, L. 1955; Secs. 15, 16, Ch. 266, L. 1963), relating to eligibility for admission to the veterans' home, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1803.

80-312. (1537) Repealed.

Repeal

This section (Sec. 2518, Pol. C. 1895), relating to selection of the site of the veterans' home, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-313. (1538) Repealed.

Repeal

This section (Sec. 2519, Pol. C. 1895; Sec. 17, Ch. 266, L. 1963), relating to donations to and property of the veterans' home, was repealed by Sec. 101, Ch. 199, Laws 1965.

80-314, 80-315. (1539, 1540) Repealed.

Repeal

These sections (Sec. 2520, Pol. C. 1895; Sec. 1294, Rev. C. 1907; Sec. 3, Ch. 23, L. 1909; Secs. 1539, 1540, R. C. M. 1921), relating to the board of managers of the veterans' home, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-316. (1541) Repealed.

Repeal

This section (Sec. 2524, Pol. C. 1895; Sec. 18, Ch. 266, L. 1963), relating to insane inmates of the veterans' home, was repealed by Sec. 101, Ch. 199, Laws 1965.

80-317 to 80-319. (1542 to 1544) Repealed.

Repeal

These sections (Secs. 2525 to 2527, Pol. C. 1895), relating to contracts, expenditures, and inspection of the veterans' home, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-320. (1545) Repealed.

Repeal

This section (Sec. 1, Ch. 18, L. 1903), relating to pensions of inmates of the veterans' home, was repealed by Sec. 101, Ch. 199, Laws 1965.

80-321, 80-322. (1546, 1546.1) Repealed.

Repeal

These sections (Sec. 1, Ch. 33, L. 1905; Sec. 1, Ch. 30, L. 1909; Sec. 3, Ch. 126, L. 1925; Sec. 1, Ch. 59, L. 1935; Sec. 1, Ch. 57, L. 1945; Sec. 232, Ch. 147, L. 1963), relating to the chaplain of the veterans' home, and to escheated funds left by inmates, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 4—FARMERS' INSTITUTES

(Repealed—Section 1, Chapter 190, Laws of 1959)

80-401 to 80-404. (1576 to 1579) Repealed.

Repeal

These sections (Secs. 1, 4, 5, pp. 55, 56, L. 1901; Secs. 1, 2, 5, Ch. 105, L. 1903; Sec. 1, Ch. 8, L. 1909; Sec. 1, Ch. 133, L. 1921), relating to farmers' institutes, were repealed by Sec. 1, Ch. 190, Laws 1959.

CHAPTER 6—STATE BUREAU OF CRIMINAL IDENTIFICATION

(Repealed—Section 101, Chapter 199, Laws of 1965)

80-601 to 80-608. (12465.1 to 12465.8) Repealed.

Repeal

These sections (Secs. 1 to 8, Ch. 151, L. 1931), relating to the state bureau of criminal identification, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2001 to 80-2006.

CHAPTER 7—THE STATE PRISON

(Repealed—Section 2, Chapter 117, Laws of 1955; Section 1, Chapter 15, Laws of 1959; Section 242, Chapter 147, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

80-701 to 80-705. (12434 to 12438) Repealed.

Repeal

These sections (Secs. 2950 to 2954, Pen. C. 1895; Sec. 1, Ch. 11, L. 1913; Sec. 1, Ch. 61, L. 1957; Sec. 1, Ch. 58, L. 1959; Secs. 31 to 34, Ch. 266, L. 1963), relating to management of the state prison, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-1404 to 80-1406 and 80-1902.

80-706. (12439) Repealed.

Repeal

This section (Sec. 1, Ch. 71, L. 1959), relating to the appointment and removal of guards and other assistants, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-707. (12440) Repealed.

Repeal

This section (Sec. 2956, Pen. C. 1895; Sec. 35, Ch. 266, L. 1963), relating to duties of the warden of the state prison, was repealed by Sec. 101, Ch. 199, Laws 1965. For new law, see sec. 80-1406.

80-707.1 to 80-707.5. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 242, L. 1959; Secs. 36, 37, Ch. 266, L. 1963), relating to custodial officers of the state prison, were repealed by Sec. 101, Ch. 199, Laws 1965.

80-708 to 80-715. (12440.1 to 12442) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 195, L. 1907; Secs. 1 to 6, Ch. 180, L. 1935; Sec. 1, Ch. 261, L. 1955; Sec. 38, Ch. 266, L. 1963), relating to the music program at the state prison and to hours of labor for prison employees, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1903.

80-716 to 80-718. (12443 to 12445) Repealed.

Repeal

These sections (Secs. 2957 to 2959, Pen. C. 1895), relating to the warden's residence and to expenditures for supplies for the prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-719, 80-720. (12446, 12447) Repealed.

Repeal

These sections (Secs. 2960, 2961, Pen. C. 1895; Sec. 1, Ch. 14, L. 1959; Sec. 230, Ch. 147, L. 1963; Secs. 39, 40, Ch. 266, L. 1963), relating to employment of prison inmates, were repealed by Sec. 101, Ch. 199, Laws 1965.

80-721 to 80-724. (12447.1 to 12447.4) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 152, L. 1927), relating to the operation of a factory for wearing apparel, were repealed by Sec. 1, Ch. 15, Laws 1959.

80-725 to 80-729. (12447.5 to 12447.9) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 173, L. 1929), relating to the operation of a tannery at the state prison, were repealed by Sec. 1, Ch. 15, Laws 1959.

80-730. (12447.10) Repealed.

Repeal

This section (Sec. 1, Ch. 196, L. 1931; amd. Sec. 1, Ch. 94, L. 1935), relating to the manufacture of brick at the state prison, was repealed by Sec. 1, Ch. 15, Laws 1959.

80-731 to 80-733. (12447.11, 12448, 12449) Repealed.

Repeal

These sections (Secs. 2962, 2963, Pen. C. 1895; Sec. 2, Ch. 196, L. 1931; Secs. 41, 42, Ch. 266, L. 1963), relating to employment of prison inmates outside the prison walls, were repealed by Sec. 101, Ch. 199, Laws 1965.

80-734. (12450) Repealed.

Repeal

This section (Sec. 2964, Pen. C. 1895), relating to money received for prison labor, was repealed by Sec. 1, Ch. 15, Laws 1959.

80-735 to 80-737. (12451 to 12453) Repealed.

Repeal

These sections (Secs. 2965 to 2967, Pen. C. 1895), relating to the inspection of books and papers, to the admission of federal prisoners, and to rules and regulations of the prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-738. (12454) Repealed.

Repeal

This section (Sec. 2968, Pen. C. 1895; Sec. 43, Ch. 266, L. 1963), relating to punishment of prison inmates, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1904.

80-740, 80-740.1. (12456) Repealed.

Repeal

These sections (Sec. 1, Ch. 60, L. 1917; Sec. 1, Ch. 107, L. 1943; Secs. 1, 3, Ch. 117, L. 1955; Sec. 44, Ch. 266, L. 1963), relating to good behavior allowances, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1905.

80-742, 80-743. (12458, 12459) Repealed.

Repeal

These sections (Secs. 2971, 2972, Pen. C. 1895; Sec. 1, Ch. 110, L. 1943; Sec. 1, Ch. 72, L. 1945; Sec. 45, Ch. 266, L. 1963), relating to the discharge of prison inmates and to the use of other institutions for confinement of prisoners, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-1906 and 80-1907.

80-744. (12460) Repealed.

Repeal

This section (Sec. 2973, Pen. C. 1895), relating to the bond of the warden of the state prison, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-745, 80-746. (12461, 12462) Repealed.

Repeal

These sections (Secs. 2974, 2975, Pen. C. 1895; Sec. 46, Ch. 266, L. 1963), relating to insane inmates and to reports of the warden and board, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-1405 and 80-1908.

80-747. (12463) Repealed.

Repeal

This section (Sec. 28, Ch. 97, L. 1961), relating to the state prison fund, was repealed by Sec. 242, Ch. 147, Laws 1963, and by Sec. 82, Ch. 266, Laws 1963.

80-748. (12464) **Repealed.**

Repeal

This section (Sec. 2977, Pen. C. 1895; Sec. 29, Ch. 97, L. 1961), relating to the compensation of sheriffs delivering convicts to state prison, was repealed by Sec. 101, Ch. 199, Laws 1965.

80-749. (12465) **Repealed.**

Repeal

This section (Sec. 2980, Pen. C. 1895), relating to records of the prison, was repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 8—MONTANA STATE INDUSTRIAL SCHOOL

(Repealed—Section 242, Chapter 147, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

80-801 to 80-805.1 (12488, 12489, 12491 to 12493) **Repealed.**

Repeal

These sections (Sec. 1, p. 183, L. 1893; Secs. 1, 3, 4, Ch. 136, L. 1915; Sec. 1, Ch. 156, L. 1943; Sec. 2, Ch. 242, L. 1953), relating to location, management, and funds of the industrial school, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-806, 80-807. (12494) **Repealed.**

Repeal

These sections (Sec. 3063, Pen. C. 1895; Sec. 1, Ch. 42, L. 1921; Sec. 1, Ch. 97, L. 1941; Sec. 2, Ch. 156, L. 1943; Sec. 1, Ch. 42, L. 1945; Sec. 59, Ch. 266, L. 1963), relating to commitments to the industrial school, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2201 and 80-2206.

80-808. (12495) **Repealed.**

Repeal

This section (Sec. 1, Ch. 61, L. 1921), relating to the president and matron of the state industrial school, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-809. (12496) **Repealed.**

Repeal

This section (Sec. 15, p. 186, L. 1893; Sec. 1, Ch. 43, L. 1921; Sec. 1, Ch. 235, L. 1953; Sec. 60, Ch. 266, L. 1963), relating to the superintendent of the industrial school, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1406.

80-810. (12497) **Repealed.**

Repeal

This section (Ap. p. Sec. 16, p. 186, L. 1893), relating to the duties of the trustees of the state industrial school, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-811. (12499) **Repealed.**

Repeal

This section (Sec. 18, p. 187, L. 1893; Sec. 3, Ch. 156, L. 1943), relating to the curriculum of instruction at the industrial school, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-2203.

80-812 to 80-814. (12500 to 12502) **Repealed.**

Repeal

These sections (Secs. 19 to 21, p. 187, L. 1893), relating to rules of the industrial school, and to reports of the president and board of trustees, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-815 to 80-824. (12503 to 12512) **Repealed.**

Repeal

These sections (Secs. 3088 to 3097, Pen. C. 1895; Sec. 1, Ch. 57, L. 1917; Sec. 1, Ch. 62, L. 1921; Secs. 4 to 6, Ch. 156, L.

1943; Sec. 1, Ch. 11, L. 1945; Sec. 1, Ch. 96, L. 1945; Sec. 1, Ch. 203, L. 1947; Sec. 1, Ch. 254, L. 1963; Secs. 61 to 63, Ch. 266, L. 1963), relating to commitment, maintenance, care and custody of industrial school inmates, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2205 to 80-2212.

80-825 to 80-827. (12513 to 12515) Repealed.

Repeal

These sections (Secs. 3098 to 3100, Pen. C. 1895), relating to buildings and improvements at the industrial school, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 9—STATE VOCATIONAL SCHOOL FOR GIRLS

(Repealed—Section 3, Chapter 133, Laws of 1955; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

80-901. (12519) Repealed.

Repeal

This section (Sec. 1, Ch. 101, L. 1919), relating to the establishment and location of the state vocational school for girls, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-902, 80-903. (12520, 12521) Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 101, L. 1919; Sec. 64, Ch. 266, L. 1963), relating to commitments to the vocational school for girls, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-2201.

80-904. (12522) Repealed.

Repeal

This section (Sec. 4, Ch. 101, L. 1919; Sec. 1, Ch. 198, L. 1945; Sec. 1, Ch. 133, L. 1955), relating to the executive board for the state vocational school for girls, was repealed by Sec. 82, Ch. 266, Laws 1963.

80-906 to 80-910. (12524 to 12528) Repealed.

Repeal

These sections (Secs. 6 to 10, Ch. 101, L. 1919; Sec. 3, Ch. 198, L. 1945), relating to the executive board and principal of the vocational school for girls, and to the leasing of land and construction of buildings for the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-911. (12529) Repealed.

Repeal

This section (Sec. 11, Ch. 101, L. 1919; Sec. 65, Ch. 266, L. 1963), relating to the superintendent of the vocational school for girls, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-1406 and 80-2202.

80-912 to 80-914. (12530 to 12532) Repealed.

Repeal

These sections (Secs. 12 to 14, Ch. 101, L. 1919; Secs. 4, 5, Ch. 198, L. 1945), relating to the executive board for the vocational school for girls, and to the salaries of employees of the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-915. (12533) Repealed.

Repeal

This section (Sec. 15, Ch. 101, L. 1919; Sec. 2, Ch. 32, L. 1943), relating to the curriculum of instruction at the vocational school for girls, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see Sec. 80-2203.

80-916, 80-917. (12534) **Repealed.**

Repeal

These sections (Sec. 16, Ch. 101, L. 1919; Secs. 6, 8, Ch. 198, L. 1945), relating to the executive board for the vocational school for girls, were repealed by Sec. 82, Ch. 266, Laws 1963.

80-918 to 80-929. (12535 to 12545) **Repealed.**

Repeal

These sections (Secs. 18 to 28, Ch. 101, L. 1919; Secs. 1, 2, Ch. 196, L. 1937; Sec. 1, Ch. 62, L. 1947; Sec. 1, Ch. 214, L. 1947; Sec. 1, Ch. 73, L. 1951; Sec. 2, Ch. 133, L. 1955; Sec. 2, Ch. 254, L. 1963; Secs. 66 to 68, Ch. 266, L. 1963), relating to commitment, maintenance, and care and custody of inmates of the vocational school for girls, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2205 to 80-2212.

80-930. (12546) **Repealed.**

Repeal

This section (Sec. 29, Ch. 101, L. 1919), relating to transfer of inmates from the industrial school, was repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—ADMISSION OF FEMALES TO REFORMATORY INSTITUTIONS

(Repealed—Section 101, Chapter 199, Laws of 1965)

80-1001 to 80-1006. (12547 to 12552) **Repealed.**

Repeal

These sections (Secs. 1 to 6, Ch. 131, L. 1909), relating to the commitment of women to reformatory institutions, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 11—MISCELLANEOUS PROVISIONS APPLICABLE TO STATE INSTITUTIONS

(Repealed—Section 101, Chapter 199, Laws of 1965)

80-1101. Repealed.

Repeal

This section (Sec. 1, Ch. 249, L. 1953; Sec. 81, Ch. 266, L. 1963), authorizing the lease or purchase of land for institutional purposes, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1405.

CHAPTER 12—STATE DEPARTMENT OF PUBLIC INSTITUTIONS

(Repealed—Section 101, Chapter 199, Laws of 1965)

80-1201 to 80-1212. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 266, L. 1963; Sec. 36, Ch. 177, L. 1965), creating the state department of public institutions, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-1401 to 80-1409.

CHAPTER 13—COLLECTION OF COSTS OF SUPPORT OF INMATES AND PATIENTS

(Repealed—Section 101, Chapter 199, Laws of 1965)

80-1301 to 80-1306. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 213, L. 1963), relating to maintenance costs for inmates of certain institutions, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-1601 to 80-1604.

CHAPTER 14—STATE DEPARTMENT OF INSTITUTIONS

Section 80-1401. Purpose of department.
80-1402. Definition of terms.
80-1403. Institutions in department.
80-1404. Director of department—appointment, powers and duties.
80-1405. Powers and duties of board.
80-1406. Wardens and superintendents of institutions—local advisory committees—council of superintendents.
80-1407. Board of institutions—appointment and qualifications.
80-1408. Officers of board—per diem and expenses of members.
80-1409. General function of board—meetings.

80-1401. Purpose of department. The purpose of the legislative assembly in creating a state department of institutions is to utilize at maximum efficiency the resources of state government in a co-ordinated effort to restore the physically or mentally disabled, to rehabilitate the violators of law, to sustain the vigor and dignity of the aged, to provide for children in need of temporary protection or correctional counseling, to train children of limited mental capacity to their best potential, to rededicate the resources of the state to the productive independence of its now dependent citizens, and to co-ordinate and apply the principles of modern institutional administration to the institutions of the state.

History: En. Sec. 1, Ch. 199, L. 1965.

Title of Act

An act for the codification and general revision of the laws relating to the department of institutions and the following institutions: Montana veterans' home, state hospital, state prison, State Pulmonary Disease Hospital, Montana center for the aged, state industrial school, state training school and hospital, Montana children's center and state vocational school for girls; amending sections 10-504, 10-506, 10-507, 10-509, 10-512, 10-612, 10-632, 16-2723, 16-3410, 69-317, 69-318, 69-2308, 75-3002, 82-401, 82-602, 82-1014, 82-1131.1, 82-1202, 82-1301, 82-2202, 82-1914, 91-105, 91-106, 94-35-264, 94-8020, 94-8022, and 94-8023, R. C. M. 1947, and repealing sections 10-101, 10-101.1, 10-102, 10-105, 10-110 through 10-114, 10-118 through 10-121, 38-101, 38-102, 38-104, 38-712 through 38-724, 38-802, 38-804 through 38-807, 38-810, 38-811, 38-813 through 38-816, 38-819, 38-1001, 38-1002, 38-1003, 38-1101, 38-1106, 38-1108 through 38-1112, 72-144, 80-201, 80-206, 80-207, 80-209, 80-210.1, 80-215, 80-302, 80-303, 80-308, 80-310, 80-311, 80-313, 80-316, 80-320, 80-601 through 80-608, 80-701 through 80-705, 80-707, 80-707.1, 80-707.2, 80-707.3, 80-707.4, 80-707.5, 80-708 through 80-715, 80-719, 80-720, 80-731, 80-732, 80-733, 80-738, 80-740, 80-740.1, 80-742, 80-743, 80-745, 80-746, 80-748, 80-806, 80-807, 80-809, 80-811, 80-815 through 80-824, 80-902, 80-903, 80-911, 80-915, 80-918 through 80-929, 80-1001 through 80-1006, 80-1101, 80-1201 through 80-1212, 80-1301 through 80-1306, 82-1103, 82-2801 through 82-2803, 94-35-152, 94-35-152.1 through 94-35-152.18, R. C. M. 1947.

Codification

Chapter 199, Laws 1965, contained a preamble reading: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 80, Revised Codes of Montana, 1947, with the subject matter under each heading assigned to a separate chapter of that title."

80-1402. Definition of terms. As used in this act, unless the context clearly indicates otherwise:

(1) "Department" means the state department of institutions.

(2) "Director" means the director of the state department of institutions.

(3) "Board" means the state board of institutions.

(4) "Institution" means any of the institutions listed in section 3 [80-1403] of this act.

History: En. Sec. 2, Ch. 199, L. 1965.

80-1403. Institutions in department. The following institutions are in the state department of institutions:

(1) State Pulmonary Disease Hospital
(2) Montana Veterans' Home
(3) State Prison
(4) Montana Children's Center
(5) State Vocational School for Girls
(6) State Industrial School
(7) State Training School and Hospital
(8) State Hospital
(9) Montana Center for the Aged

No state institution may be moved, discontinued or abandoned without prior consent of the legislative assembly.

History: En. Sec. 3, Ch. 199, L. 1965.

80-1404. Director of department—appointment, powers and duties. The board shall appoint the director, who is the chief executive and administrative officer of the department. The director shall be a person qualified by experience, training and professional competence in institutional rehabilitation and treatment management. The function of the director, in addition to other duties assigned to him by law, is to execute the policies established by the board. The director shall appoint employees for the central office of the department. The board shall appoint and after hearing held discharge the warden or superintendents of institutions.

History: En. Sec. 4, Ch. 199, L. 1965.

80-1405. Powers and duties of board. The board shall:

(1) Adopt general rules and regulations, not inconsistent with law, for the government of the department. Such rules and regulations may govern and provide for

(a) The admission, custody, transfer and release of residents of institutions except as otherwise provided by law. However, no such rules and regulations shall amend or alter the statutory powers and duties of the state board of pardons.

(b) The manufacture, production, acquisition, use, and transfer of materials, supplies, and produce, for and between institutions.

(c) The custody, expenditure, and receipt of moneys at institutions.

(d) Employment of personnel in institutions.

(2) Report to the governor before the first day of November of each year and to the legislative assembly before the second Monday of each biennial legislative session. The reports shall fully describe the activities of the department and shall contain recommendations for any changes in programs or the passage of any laws necessary for the improvement of the department.

(3) Review and approve all budget requests for institutions prior to submittal to the director of the budget.

(4) Subject to the provisions of "The Department of Administration Act," lease or purchase lands for use by institutions, and classify such

lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands, and the relative value of agricultural programs in the treatment or rehabilitation of the person confined in institutions.

(5) Utilize the staff and services of other state agencies and units of the university of Montana, within their respective statutory functions, to carry out the purposes of this act.

(6) Propose programs to the legislative assembly to meet the projected long range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions.

(7) Encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability.

History: En. Sec. 5, Ch. 199, L. 1965.

Agencies Abolished

Section 102, Ch. 199, Laws of 1965, abolished the council for welfare, health and institutions and the advisory council on prison-made goods and transferred the records and property of those agencies to the state department of institutions.

80-1406. Wardens and superintendents of institutions—local advisory committees—council of superintendents. The warden or superintendents of institutions in the department are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department. Except as otherwise provided by law, the warden or superintendent of each institution may appoint and employ all necessary assistants and employees, subject to approval by the director as to number, salary, classification and qualification. The warden or superintendent of an institution, subject to approval by the director and the board, may appoint a local advisory committee, without obligation to the state, to serve as a liaison agency with the community in which the institution is located. The warden and superintendents comprise a council of superintendents which shall meet periodically with the board.

History: En. Sec. 6, Ch. 199, L. 1965.

80-1407. Board of institutions—appointment and qualifications. The state board of institutions consists of five (5) members appointed by the governor with the advice and consent of the senate. The appointees shall be selected so that not more than three (3) are from the same congressional district and so that not more than three (3) are affiliated with the same political party. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term. Board members shall be qualified by aptitude, experience and interest.

History: En. Sec. 7, Ch. 199, L. 1965.

80-1408. Officers of board—per diem and expenses of members. The board shall elect a chairman and other necessary officers. Board members shall receive twenty-five dollars ($25.00) per day for attending meetings or in the discharge of other board duties when assigned by the board.

Board members shall also be reimbursed for actual and necessary expenses incurred in attending meetings and in the discharge of other board duties when assigned by the board. The director shall act as secretary of the board.

History: En. Sec. 8, Ch. 199, L. 1965.

80-1409. General function of board—meetings. The function of the board, in addition to other duties assigned to it by law, is to establish general policies for the management of the department of institutions, and to advise and consult with the governor and director on the management of institutions. The board shall meet bimonthly and may hold additional meetings on the call of the chairman, or at the request of the director or any two members of the board. Three members constitute a quorum for the transaction of business.

History: En. Sec. 9, Ch. 199, L. 1965.

CHAPTER 15—INSTITUTIONAL INDUSTRIES

Section 80-1501. Industrial activities permitted at institutions—powers of department—incentive pay to inmates.
80-1502. Disposition of receipts from sale of goods.
80-1503. Public sale of goods prohibited—exchange for products of other states—labor contracts.

80-1501. Industrial activities permitted at institutions—powers of department—incentive pay to inmates. The department of institutions may

(1) Establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions.

(2) Print catalogs describing goods manufactured or produced by institutions and distribute the catalogs.

(3) Fix the sale price for goods produced or manufactured at institutions. Such prices shall not exceed prices existing in the open market for goods of comparable quality.

(4) Require institutions to purchase needed goods from other institutions.

(5) Provide for the repair and maintenance of property and equipment of institutions by residents of institutions.

(6) Provide for the repair and maintenance at an institution of furniture and equipment of any state agency.

(7) Provide for the manufacture at an institution of motor vehicle license plates and other articles needed by the registrar of motor vehicles.

(8) In case of emergency, and with the approval of the board, sell agricultural products and livestock on the open market. Receipts from such sales shall be deposited in the general fund.

(9) Provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions.

(10) Pay an inmate of the state prison an amount not exceeding fifty cents ($.50) per day as an incentive for the performance of work, based on the following criteria:

(a) Knowledge and skill
(b) Attitude toward authority
(c) Physical effort
(d) Responsibility for equipment and materials
(e) Regard for safety of others.

All such wages shall be paid from receipts from the sale of goods produced or manufactured at the institution where the resident resides.

History: En. Sec. 10, Ch. 199, L. 1965.

80-1502. Disposition of receipts from sale of goods. Except as provided in subsection (8) of section 10 [80-1501] of this act, receipts from the sale of goods produced or manufactured by an institution shall be deposited in the earmarked revenue fund for the use of the industries program of the institution.

History: En. Sec. 11, Ch. 199, L. 1965.

80-1503. Public sale of goods prohibited—exchange for products of other states—labor contracts. (1) Except as provided in subsection (8) of section 10 [80-1501] of this act, and except for articles made by a resident of an institution for his own profit, the sale or exchange, directly or indirectly to the consuming public of goods produced or manufactured at an institution, is prohibited.

(2) The exchange of goods produced by an institution for the products of any other state is prohibited.

(3) Except where specifically permitted by the department of institutions, arranging for the labor of a resident of an institution is prohibited.

History: En. Sec. 12, Ch. 199, L. 1965.

CHAPTER 16—PAYMENTS FOR THE CARE OF RESIDENTS OF INSTITUTIONS

Section 80-1601. Institutions subject to per diem charge.
80-1602. Definition of terms.
80-1603. Monthly assessment of charges—Indians—annual computation of rate—application to pay less—investigation and review—deposit of receipts.
80-1604. Civil suit for collection of payments—judgment lien—claims against decedents' estates.

80-1601. Institutions subject to per diem charge. The state department of institutions shall collect and process per diem payments for the care of residents in the following institutions:

(1) Montana Children's Center
(2) State Hospital
(3) State Training School and Hospital
(4) State Pulmonary Disease Hospital
(5) Montana Veterans' Home
(6) Montana Center for the Aged

History: En. Sec. 13, Ch. 199, L. 1965.

80-1602. Definition of terms. As used in sections 13 through 16 of this act [this chapter]

(1) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(2) "Per diem" means the gross daily cost of operating an institution, excluding capital outlay for physical plant and the cost of educational programs, divided by the full-time equivalent resident load. The per diem may be computed separately for distinctively different programs at multi-purpose institutions.

(3) "Resident" means any person who is receiving care from, or who is a resident of, an institution listed in section 13 [80-1601] of this act.

(4) "Responsible person" means a person responsible for the support and maintenance of a resident.

History: En. Sec. 14, Ch. 199, L. 1965.

80-1603. Monthly assessment of charges—Indians—annual computation of rate—application to pay less—investigation and review—deposit of receipts. (1) The department shall assess monthly against each resident or responsible person the appropriate per diem charge. If the resident is an Indian who is a ward of the federal government, the per diem charge shall be assessed against the appropriate agency of the federal government. The per diem shall be computed on July 1 of each year by the director of institutions.

(2) A resident or responsible person may apply to the department for permission to pay less than the per diem charge or none of the per diem charge. On receipt of such an application, the department shall request an investigation by the county department of public welfare of the county in which the resident or responsible person is a resident. The county department of public welfare shall submit to the department, on forms furnished by the department, no later than sixty (60) days after the request, a report and recommendation on the ability of the resident or responsible person to pay all or a part of the per diem charge. Upon receipt of the report, the department shall determine, based on the financial ability of the resident or responsible person, whether the resident or responsible person shall be charged with the full amount, a lesser amount, or whether no charge against the resident or responsible person shall be made. If a resident or responsible person disagrees with the determination of the department, an appeal may be filed within thirty (30) days of the determination with the state board of institutions.

(3) The department may, at any time, review and change any determination for per diem payments, and may, if necessary, request a further investigation by a county department of public welfare. In any case, however, no resident of an institution shall be released by reason of the nonpayment of the per diem, if in the judgment of the superintendent of the institution at which he is a resident, such release is medically inadvisable.

(4) All per diem payments received by the department shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 15, Ch. 199, L. 1965.

80-1604. Civil suit for collection of payments—judgment lien—claims against decedents' estates. If a resident or responsible person liable for per diem payments due under this act refuses or fails to make such payments, the payments are collectible by a civil suit brought in the name of the state of Montana. The state of Montana may sue a resident or responsible person for payments due; and any judgment obtained is a lien upon the real property of such person, and shall be collected as other judgments. A claim arising under this act has the same force and effect against the real and personal property of a deceased person as other debts of a decedent, and shall be ascertained and recovered in the same manner.

History: En. Sec. 16, Ch. 199, L. 1965.

CHAPTER 17—STATE PULMONARY DISEASE HOSPITAL

Section 80-1701. Location and primary function of hospital—secondary function.
80-1702. Qualifications of superintendent.
80-1703. Transfer of patient to mental institution—notice to relatives.

80-1701. Location and primary function of hospital—secondary function. (1) The institution located at Galen is the State Pulmonary Disease Hospital and, as its primary function, provides:

(a) Treatment of tuberculosis and silicosis (commonly called miner's consumption).

(2) If there are space and funds available, the hospital shall also treat the following:

(a) Emphysema, bronchiectasis, carcinoma of the lung and other diseases of the lung pertaining to pulmonary disorders.

(b) Geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution.

History: En. Sec. 17, Ch. 199, L. 1965.

80-1702. Qualifications of superintendent. The superintendent of State Pulmonary Disease Hospital shall be a physician legally qualified to practice medicine in Montana with at least four years in the practice of his profession, including at least one year's experience in a general hospital.

History: En. Sec. 18, Ch. 199, L. 1965.

80-1703. Transfer of patient to mental institution—notice to relatives. A mentally retarded or mentally ill person residing at State Pulmonary Disease Hospital may be transferred to the State Hospital, the Montana Center for the aged, or the State Training School and Hospital with the approval of the department of institutions, if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse, or if none is known, his nearest

relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 19, Ch. 199, L. 1965.

CHAPTER 18—MONTANA VETERANS' HOME

Section 80-1801. Location and function of home—persons admitted.
80-1802. Superintendent to be veteran.
80-1803. Eligibility for residence in home.
80-1804. Acceptance and deposit of federal moneys.

80-1801. Location and function of home—persons admitted. The institution at Columbia Falls is the "Montana Veterans' Home" and, as its primary function, provides home and subsistence for honorably discharged veterans. The department may also admit wives or widows of honorably discharged veterans to the home if space allows.

History: En. Sec. 20, Ch. 199, L. 1965.

80-1802. Superintendent to be veteran. The superintendent of the Montana Veterans' Home shall be an honorably discharged veteran of the armed forces of the United States.

History: En. Sec. 21, Ch. 199, L. 1965.

80-1803. Eligibility for residence in home. To be eligible for residence in the Montana Veterans' Home under the regulations prescribed by the state department of institutions a person shall

(1) Be an honorably discharged veteran, or the wife or widow of a veteran, who served in the armed forces of the United States.

(2) Be an invalid and have become unable to earn a livelihood as a result of the disability.

(3) Have resided in Montana for a period of two years immediately prior to making application for admittance.

(4) Not have been convicted of a felony or of a crime involving moral turpitude.

(5) Not be an alcoholic or have a record of habitual inebriation.

(6) If a woman, be fifty (50) years of age or older.

History: En. Sec. 22, Ch. 199, L. 1965.

80-1804. Acceptance and deposit of federal moneys. The state department of institutions may accept moneys from the federal government that become available to the state as a result of operating the Montana Veterans' Home and shall deposit such moneys in the state treasury for the benefit of the home. If the resident of the home is transferred to another institution, the department of institutions shall continue to draw from the federal government any moneys available for the maintenance of such former resident.

History: En. Sec. 23, Ch. 199, L. 1965.

CHAPTER 19—STATE PRISON

Section 80-1901. Location and function of prison.
80-1902. Qualifications of warden.
80-1903. Working hours of prison employees.
80-1904. Punishment of inmates.
80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law.
80-1906. Clothing and money furnished on discharge or parole.
80-1907. Contracts for confinement of inmates in other institutions.
80-1908. Commitment of inmates to state hospital.

80-1901. Location and function of prison. The institution at Deer Lodge is the "State Prison" and as its primary function provides facilities for the custody, treatment, training and rehabilitation of adult criminal offenders.

History: En. Sec. 24, Ch. 199, L. 1965.

80-1902. Qualifications of warden. The warden of the state prison shall be a person trained through education and experience in directing a training, rehabilitation or custodial program in a penal institution.

History: En. Sec. 25, Ch. 199, L. 1965.

80-1903. Working hours of prison employees. A period of eight hours in each period of twenty-four consecutive hours constitutes a day's work for all employees of the state prison. The staff of correctional personnel shall not work more than forty-eight hours or six days a week except in cases of riots, escapes or other emergencies endangering health, life, or property.

History: En. Sec. 26, Ch. 199, L. 1965.

80-1904. Punishment of inmates. No barbarous punishments may be prescribed for an inmate of the state prison, nor shall an inmate, as punishment, be deprived of his normal provision of food while being compelled to work the usual number of hours per day.

History: En. Sec. 27, Ch. 199, L. 1965.

80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law. (1) The state department of institutions shall adopt rules and regulations providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) ten (10) days per month for inmates assigned within the confines of the walls of the prison;

(b) thirteen (13) days per month for those inmates placed outside the confines of the walls of the prison;

(c) fifteen (15) days per month for those inmates who have been assigned outside the walls of the prison for an uninterrupted period of one year on a minimum status.

(2) In the event of an attempted escape by an inmate, or a violation of the rules and regulations prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allow-

ances. The warden of the state prison shall advise the department of institutions of any attempted escape or violation of rules and regulations on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) This section applies to all persons who are on probation or parole or eligible to be placed on probation or parole. No person convicted and sentenced before April 1, 1955, shall have his good time allowance reduced as a result of this section.

History: En. Sec. 28, Ch. 199, L. 1965.

DECISIONS UNDER FORMER LAW

Ex Post Facto Application

As applied to a prisoner serving time for a crime committed prior to April 1, 1955, former section 80-740 would be ex post facto, and the prisoner is entitled to the more lenient provisions of section 80-739, the law in effect at the time of the crime. State ex rel. Nelson v. Ellsworth, 142 M 14, 380 P 2d 886.

Forfeiture of Good Time Allowance

The board of prison commissioners is vested with discretionary power as to the allowance or forfeiture of good time and may make such rules and regulations as are reasonable in connection therewith. In re Pelke's Petition, 139 M 354, 365 P 2d 932, 934; In re Owens' Petition, 139 M 637, 365 P 2d 935.

A prisoner who, by virtue of section 80-740.1, is earning good time under section 80-739, the prior law, is subject to the provisions of section 80-741, the forfeiture statute which existed under the old law. Hill v. State, 139 M 407, 365 P 2d 44, 45, 95 ALR 2d 1261; In re Pelke's Petition, 139 M 628, 365 P 2d 936.

Under the "new parole laws" (sections 94-9821 to 94-9851) a prisoner retains the right to earn good time under the old good time statutes and he is subject to forfeiture of this good time. Hill v. State, 139 M 407, 365 P 2d 44, 46, 95 ALR 2d 1261; In re Pelke's Petition, 139 M 628, 365 P 2d 936.

Under section 80-741, R. C. M. 1947 (repealed by Laws 1955, ch. 117, sec. 2) providing for forfeiture of good time for any flagrant disregard of the rules of the prison, the board of prison commissioners has the authority to forfeit any good time for a parole violation. Hill v. State, 139 M 407, 365 P 2d 44, 45, 95 ALR 2d 1261; In re Pelke's Petition, 139 M 354, 365 P 2d 932, 934, 936.

A convict, by escaping, forfeits all his good time. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Parole Violations

Under former section 80-740 a prisoner's good time could be forfeited for violation of the conditions of parole as well as for violation of rules and regulations within the prison itself. Petition of La Doux, — M —, 393 P 2d 778; Petition of Dubois, — M —, 394 P 2d 1022.

Second Conviction

Relator was convicted of crime of burglary in the first degree. After serving one year and six days he was released from prison pending his appeal. The conviction was reversed upon such appeal and a new trial ordered. Upon the new trial he was again convicted and sentenced for the same period as the first, ten years. During his second incarceration he was not entitled to credit against the second sentence for time served under the first sentence. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318.

80-1906. Clothing and money furnished on discharge or parole. The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state shall receive five dollars ($5.00); all other discharged or paroled inmates shall receive an amount not exceeding twenty-five dollars ($25.00).

History: En. Sec. 29, Ch. 199, L. 1965.

80-1907. Contracts for confinement of inmates in other institutions. When the state prison is inadequate to contain an inmate sentenced to

confinement there, the department of institutions shall enter into contracts with the federal government, other states, or the commissioners of counties that have suitable jails for confining inmates sentenced to the state prison.

History: En. Sec. 30, Ch. 199, L. 1965.

80-1908. Commitment of inmates to state hospital. The procedures for committing an inmate of the state prison to the state hospital are the same as for any other person.

History: En. Sec. 31, Ch. 199, L. 1965.

CHAPTER 20—STATE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

Section 80-2001. Bureau under prison warden—appointment of supervisor.
80-2002. Files of identification information—wardens and superintendents to furnish information—co-operation with law officers.
80-2003. Fingerprints to be taken and forwarded on felony arrests—information on previous criminal record—destruction of information on acquittal.
80-2004. Failure of officer to provide information—salary withheld.
80-2005. Co-operation with F.B.I. and other states.
80-2006. Assistance and instruction of local officers.

80-2001. Bureau under prison warden—appointment of supervisor. The state bureau of criminal identification and investigation is under the immediate supervision of the warden of the state prison. The warden shall appoint a supervisor of the bureau with the approval of the director of institutions.

History: En. Sec. 32, Ch. 199, L. 1965.

80-2002. Files of identification information—wardens and superintendents to furnish information—co-operation with law officers. The supervisor shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements and other pertinent information of all persons who have been convicted of a felony within the state, and of other well-known and habitual criminals. The warden or superintendents of all institutions shall furnish such material to the supervisor of the state bureau of criminal identification on request. The supervisor shall co-operate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification.

History: En. Sec. 33, Ch. 199, L. 1965.

80-2003. Fingerprints to be taken and forwarded on felony arrests—information on previous criminal record—destruction of information on acquittal. Sheriffs, chiefs of police and all other law enforcement officers shall take the fingerprints of a person arrested for a felony on forms furnished by the supervisor and forward them with other information requested by the supervisor to the bureau. The supervisor shall compare the description received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the official having custody of the person

arrested. If a person is found innocent of the offense charged, the fingerprints and description shall be destroyed.

History: En. Sec. 34, Ch. 199, L. 1965.

80-2004. Failure of officer to provide information—salary withheld. The supervisor shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information, until the information is given to the bureau.

History: En. Sec. 35, Ch. 199, L. 1965.

80-2005. Co-operation with F.B.I. and other states. The supervisor shall co-operate with identification bureaus in other states and with the Federal Bureau of Investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.

History: En. Sec. 36, Ch. 199, L. 1965.

80-2006. Assistance and instruction of local officers. The supervisor shall assist and, when practicable, instruct sheriffs, chiefs of police and other law officers in establishing efficient local bureaus of identification in their districts, and in making them proficient in procuring and maintaining fingerprint records.

History: En. Sec. 37, Ch. 199, L. 1965.

CHAPTER 21—MONTANA CHILDREN'S CENTER

Section 80-2101. Location and function of center.
80-2102. Superintendent to manage center.
80-2103. Medical examination before commitment to center—records to accompany child committed.
80-2104. Discharge of child from center.
80-2105. Commitment of resident to vocational school or industrial school.
80-2106. Transfer of child to mental institution—notice to parents or guardian.
80-2107. University aid to children resident at center.

80-2101. Location and function of center. The institution located at Twin Bridges is the "Montana Children's Center." The primary function of the center is the support and care of dependent or neglected children as defined in section 10-501, R. C. M. 1947, who require separation from their families or foster families or for whom foster care cannot be obtained.

History: En. Sec. 38, Ch. 199, L. 1965.

80-2102. Superintendent to manage center. The children's center is under the immediate management and control of the superintendent.

History: En. Sec. 39, Ch. 199, L. 1965.

80-2103. Medical examination before commitment to center—records to accompany child committed. Before a child is committed to the center he shall be examined by a licensed physician. A child committed to the center shall be accompanied by the order of commitment, an adequate social history, a medical report and any school records.

History: En. Sec. 40, Ch. 199, L. 1965.

80-2104. Discharge of child from center. The superintendent, with the consent of the department of institutions, may discharge a child from the center if it is in the best interests of the child.

History: En. Sec. 41, Ch. 199, L. 1965.

80-2105. Commitment of resident to vocational school or industrial school. Whenever a child residing at the children's center becomes incorrigible, or whenever his conduct endangers the welfare of the other residents of the home or any other person, the superintendent with the consent of the department of institutions shall petition the district court for commitment of the child to the state vocational school for girls or the state industrial school.

History: En. Sec. 42, Ch. 199, L. 1965.

80-2106. Transfer of child to mental institution—notice to parents or guardian. (1) The superintendent of the Montana children's center may, with the approval of the department, transfer a child to the state hospital or state training school and hospital. The transfer order must be certified by a licensed physician that he has personally examined the child and is of the opinion that he is mentally ill or mentally retarded, as the case may be.

(2) Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the director of institutions shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court which committed the child. In the case of an emergency transfer, the director shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 43, Ch. 199, L. 1965.

80-2107. University aid to children resident at center. The department of institutions may, on the recommendation of the superintendent, authorize a resident of the children's center who has completed high school, and who is otherwise eligible, to receive up to eight hundred dollars ($800.00) per year toward his expenses incurred in attending a unit of the university of Montana. The money may be used for transportation, clothing, books, board and room, and shall be paid in the same manner as other expenses of the center. The university of Montana shall not charge any fees or tuition for such residents. No more than eight residents of the center may receive these benefits each year. A resident receiving these benefits remains subject to the control of the center. The department of institutions shall notify the board of regents no later than August 1 of each year of the residents whom it has designated to receive the benefits for the forthcoming school year.

History: En. Sec. 44, Ch. 199, L. 1965.

CHAPTER 22—STATE VOCATIONAL SCHOOL FOR GIRLS AND STATE INDUSTRIAL SCHOOL

Section 80-2201. Location and functions of schools.
80-2202. Superintendents to manage schools.
80-2203. Curricula at schools.
80-2204. Maximum age for commitment—mental capacity and physical health required.

80-2205. Medical examination before commitment—records to accompany child committed.
80-2206. Transportation and commitment expenses—arrangement for transportation.
80-2207. County and federal payments for residents at industrial school—physical education building.
80-2208. Placement or discharge of residents—control after placement—aftercare program.
80-2209. Transfer of child to mental institution—notice to parents or guardian and committing court.
80-2210. Commutation of prison sentence to school commitment—revocation of commutation.
80-2211. Apprehension and return of absentees.
80-2212. Aiding resident in leaving school—penalty.
80-2213. University aid to residents of schools.

80-2201. Location and functions of schools. The state vocational school for girls is the institution located in Helena and has as its primary function the care, education, training, treatment and rehabilitation of girls ten (10) years of age or older and under twenty-one (21) years of age who are committed to the school by a court as provided by law. The state industrial school is the institution located in Miles City and has as its primary function the care, education, training, treatment and rehabilitation of boys ten (10) years of age or older and under twenty-one (21) years of age who are committed to the school by a court as provided by law.

History: En. Sec. 45, Ch. 199, L. 1965.

80-2202. Superintendents to manage schools. The state vocational school for girls and the state industrial school are each under the immediate management and control of a superintendent.

History: En. Sec. 46, Ch. 199, L. 1965.

80-2203. Curricula at schools. The curricula of the state vocational school for girls and the state industrial school shall include such academic and vocational subjects as are taught in the public schools of the state, and shall conform to the standards set by the state board of education.

History: En. Sec. 47, Ch. 199, L. 1965.

80-2204. Maximum age for commitment—mental capacity and physical health required. No child shall be committed to the state vocational school for girls or the state industrial school who has attained the age of eighteen (18) years or who does not possess the mental capacity or physical health which will enable him to benefit from the training and educational programs of the school.

History: En. Sec. 48, Ch. 199, L. 1965.

80-2205. Medical examination before commitment—records to accompany child committed. Before a child is committed to the state vocational school for girls or the state industrial school he shall be examined by a licensed physician. A child committed to one of the schools shall be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

History: En. Sec. 49, Ch. 199, L. 1965.

80-2206. Transportation and commitment expenses—arrangement for transportation. The expense of committing and transporting a child to the state vocational school for girls or state industrial school and the expense of returning him to the county of residence shall be borne by his county of residence. The district judge shall arrange for transportation of the child to the school to which he is committed.

History: En. Sec. 50, Ch. 199, L. 1965.

80-2207. County and federal payments for residents at industrial school—physical education building. (1) The county of residence, or if the resident is an Indian, the appropriate federal agency, shall pay seventy-five cents ($.75) per day from the county general or poor fund for each child residing at the state industrial school.

(2) Before the fifteenth day of every month the department of institutions shall send to the county commissioners, or the appropriate federal agency, a statement showing the name of the child, the number of days in the preceding month for which payment is to be made, and the total amount due.

(3) All payments received for children residing in the state industrial school under this section shall be deposited in the state treasury to the credit of the sinking fund, and shall be pledged to the retirement of bonds or other securities issued for the construction of a physical education building. Construction of a physical education building shall be commenced by July 1, 1965, and when the building has been constructed and paid for all payments for children residing in the state industrial school shall cease.

History: En. Sec. 51, Ch. 199, L. 1965.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

Physical Education Building

Chapter 255, Laws 1963, authorized the construction of a physical education building at the industrial school. The act read: "An act providing for the construction of a physical education building at the state industrial school, allowing the borrowing of money or issuance of bonds or other securities for such purpose and providing for repayment of the same.

"Section 1. The state board of public institutions may authorize the construction of a physical education building at the state industrial school; provided, however, that the cost of such building shall not exceed two hundred and fifty thousand dollars ($250,000).

"Section 2. For the purpose of effecting the construction of the physical education building specified in section 1, the state board of public institutions, may:

(1) Borrow money and issue bonds or other securities.

(2) For the repayment of money so borrowed, or the retirement of bonds or other securities so issued, pledge all or a part of the income received from the daily fees received from counties and deposited in the sinking fund.

(3) Upon the retirement of these bonds or other securities, this money shall revert to the general fund.

"Section 3. A copy of the notice of sale of any bonds authorized by this act shall be forwarded to the register of state lands of the state of Montana at least thirty (30) days before the date of such sale.

"Section 4. No obligation created by this act shall ever become a charge against the state of Montana."

80-2208. Placement or discharge of residents—control after placement—aftercare program. The department of institutions may place out under supervision, or discharge, a child residing at the state vocational school for girls or the state industrial school whose conduct indicates that he has

satisfactorily adjusted and is otherwise a proper person to be discharged. The department of institutions has control over a child placed out under supervision until he attains the age of twenty-one (21) years, and may recall him to the school if he violates the terms of his placement. The department may establish an aftercare program for the supervision and counseling of a child placed out.

History: En. Sec. 52, Ch. 199, L. 1965.

80-2209. Transfer of child to mental institution—notice to parents or guardian and committing court. (1) The superintendent of the state vocational school for girls or state industrial school may, with the approval of the department, transfer a child to the state hospital or state training school and hospital. The transfer order must be certified by a licensed physician that he has personally examined the child and is of the opinion that he is mentally ill or mentally retarded, as the case may be.

(2) Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department of institutions shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court which committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 53, Ch. 199, L. 1965.

80-2210. Commutation of prison sentence to school commitment—revocation of commutation. (1) Upon the application of a child under the age of eighteen (18) years who has been sentenced to the state prison, or upon the application of his parents or guardians, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by commiting such child to the state vocational school for girls or state industrial school during his minority or until sooner placed or discharged.

(2) If such child's behavior after being sent to one of such schools indicates that he is not a proper person to reside at one of the schools, the governor after consulting with the department of institutions with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the schools, or while a refugee from one of the schools, shall not be considered as a part of his original sentence.

History: En. Sec. 54, Ch. 199, L. 1965.

80-2211. Apprehension and return of absentees. A child who has left the state vocational school for girls or state industrial school without permission may be apprehended and returned by any citizen.

History: En. Sec. 55, Ch. 199, L. 1965.

80-2212. Aiding resident in leaving school—penalty. A person who permits or assists a resident of the state vocational school for girls or the state industrial school to leave the school without permission, or who furnished or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission, or who harbors or conceals a resident who has left without permission, shall

on conviction be punished by imprisonment for a term of not less than six (6) months or more than two (2) years, or by a fine not exceeding one thousand ($1,000) dollars, or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965.

80-2213. University aid to residents of schools. The department of institutions may, on recommendation of the superintendent, authorize a resident of the state vocational school for girls or state industrial school who has completed high school, and who is otherwise eligible, to receive up to eight hundred dollars ($800.00) per year toward his expenses incurred in attending a unit of the university of Montana. The money may be used for transportation, clothing, books, board and room, and shall be paid in the same manner as other expenses of the school. The university of Montana shall not charge any fees or tuition for such residents. No more than eight residents of each school may receive these benefits each year. The department of institutions shall notify the board of regents no later than August 1 of each year of the residents who it has designated to receive the benefits for the forthcoming school year.

History: En. Sec. 57, Ch. 199, L. 1965.

CHAPTER 23—STATE TRAINING SCHOOL AND HOSPITAL

Section 80-2301. Location and function of school.
80-2302. Superintendent to manage school—school in division of mental retardation.
80-2303. Residence required for admittance to school.
80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary.
80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application.
80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs.
80-2307. Temporary admissions to school.
80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court.
80-2309. Discharge from school.

80-2301. Location and function of school. (1) The institution located at Boulder is the "State Training School and Hospital." The primary function of the school is the care, treatment, training and education of mentally retarded persons.

(2) As used in this act "mental retardation" is a state of subnormal development of the human organism which results in the mental incapability of the person affected to adapt himself to the daily demands of his social environment.

History: En. Sec. 58, Ch. 199, L. 1965.

80-2302. Superintendent to manage school—school in division of mental retardation. The superintendent of the state training school and hospital is responsible for the immediate management and control of the school. The school is in the division of mental retardation of the department of institutions.

History: En. Sec. 59, Ch. 199, L. 1965.

80-2303. Residence required for admittance to school. To be eligible for admittance to the state training school and hospital, a mentally retarded person or his parent or guardian shall have been a resident of the state for at least one year.

History: En. Sec. 60, Ch. 199, L. 1965.

80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary. If an application for admission of a mentally retarded person to the state training school and hospital is made by the guardian or parent it shall be filed with the department of institutions, in a form prescribed by the department and available at the county department of public welfare office. The application shall be supported by the affidavit of two physicians or one psychologist acceptable to the department of institutions and one physician certifying that the person whose admission is sought is mentally retarded. The county department of public welfare, where the retarded person resides, shall prepare a social summary on the retarded person for the use of the state training school and hospital.

History: En. Sec. 61, Ch. 199, L. 1965.

80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application. If the application for admission is made by someone other than the parent or legal guardian of a mentally retarded person, it shall be filed with the clerk of the district court. The application shall be in a form prescribed by the state department of institutions. The judge shall set the time and place for hearing the application, and the clerk shall notify the parents or guardians, and other interested persons. The court shall name two physicians or one psychologist acceptable to the department of institutions and one physician, to examine the person whose admission is sought. The county department of public welfare shall prepare a social summary of the person for the use of the court. If the court concludes from the examination and other information obtained at the hearing that the person whose admission is sought is a proper person for admission to the state training school and hospital, the court shall issue an order approving the application.

History: En. Sec. 62, Ch. 199, L. 1965.

80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs. A person may not be taken to the state training school and hospital until the department of institutions has ascertained whether or not there is room at the school to accommodate the person. If there is not room, the application shall be filed with the department, which shall grant admission when room becomes available. When there is room the person shall be sent to the school with a copy of the court order, if any, the application, and the social summary prepared by the county department of public welfare. The costs of transportation to the school shall be paid by the county where the person resides.

History: En. Sec. 63, Ch. 199, L. 1965.

80-2307. Temporary admissions to school. In order to utilize facilities more efficiently during the temporary or seasonal decreases in population, and in order to extend the benefits of training and treatment programs offered by the state training school and hospital to mentally retarded persons whose extended commitment is not sought, the department of institutions may admit a mentally retarded person to the school for a period not exceeding sixty (60) days on the application of the person's parent or guardian.

History: En. Sec. 64, Ch. 199, L. 1965.

80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court. With the approval of the department of public institutions, a patient of the state training school and hospital may be transferred to the state hospital of [or] the State Pulmonary Disease Hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the person, and to the district court, if any, which committed the person. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 65, Ch. 199, L. 1965.

80-2309. Discharge from school. (1) With the approval of the department of institutions, the superintendent may discharge a person admitted to the state training school and hospital.

(2) A person admitted to the school who requests his discharge or whose discharge is requested in writing by his parent or guardian shall be discharged within twenty (20) days after receipt of the request unless the department of institutions files a petition with the district court certifying that the person whose discharge is sought is not a proper person to be discharged. The judge shall set the time and place for hearing, and after examining all relevant information presented at the hearing shall either approve the petition of the department or order the person discharged.

History: En. Sec. 66, Ch. 199, L. 1965.

CHAPTER 24—DIVISION OF MENTAL HYGIENE—STATE HOSPITAL

Section 80-2401. Location and function of hospital—hospital in division of mental hygiene.
80-2402. Superintendent is supervisor of division—qualifications of superintendent.
80-2403. Functions of division of mental hygiene.
80-2404. Alcoholism services center.

80-2401. Location and function of hospital—hospital in division of mental hygiene. The institution located at Warm Springs is the "State Hospital." The only function of the state hospital is the care and treatment of mentally ill persons and alcoholics. The state hospital is in the division of mental hygiene of the department of institutions.

History: En. Sec. 67, Ch. 199, L. 1965.

80-2402. Superintendent is supervisor of division—qualifications of superintendent. The superintendent of the state hospital is the supervisor of the division of mental hygiene. The superintendent shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry.

History: En. Sec. 68, Ch. 199, L. 1965.

80-2403. Functions of division of mental hygiene. The division of mental hygiene of the department of institutions shall:

(1) Take cognizance of matters affecting the mental health of the citizens of the state.

(2) Initiate preventive mental hygiene activities of the state's mental health program.

(3) Make scientific and medical investigations relative to the incidence, cause, prevention and care of mental illness.

(4) Collect and disseminate information relating to mental hygiene.

(5) Prepare plans for the development of mental health services in the state.

(6) Examine persons received into the state hospital and other persons who apply for examination, for the purpose of diagnosing and prescribing treatment of mental illness.

(7) Establish and conduct clinics in cities and towns of the state for the diagnosis and treatment of mental illness.

(8) Receive from agencies of the United States and other agencies grants of money for the development of mental hygiene services within the state, and use such moneys in its operation.

History: En. Sec. 69, Ch. 199, L. 1965.

80-2404. Alcoholism services center. (1) There is an alcoholism services center at the state hospital. The admittance and discharge procedures for alcoholics are the same as for mentally ill persons.

(2) As used in this section:

(a) "Alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations or economic functioning, or to an extent which endangers the public health, welfare or safety.

(b) An "alcoholic" is a person suffering from the illness of alcoholism.

(3) The alcoholism services center shall:

(a) Provide custody, care, diagnosis, treatment and rehabilitation to persons in Montana who seek, or are required to seek, relief from the illness of alcoholism or the complications thereof;

(b) Consult with, inform, guide and co-operate with Montana communities and citizens' committees who seek assistance in establishing local alcoholism treatment, rehabilitation and public information services;

(c) Accumulate and disseminate scientific information on alcoholism to all agencies, groups and individuals, public or private, who require or seek such services;

(d) Initiate, encourage and co-ordinate practical research on alcoholism in Montana aimed at improving treatment, rehabilitation and prevention techniques or services; and

(e) Enter into co-operative agreement with other state agencies to further the work of the center.

History: En. Sec. 70, Ch. 199, L. 1965.

CHAPTER 25—MONTANA CENTER FOR THE AGED

Section 80-2501. Location and function of center.
80-2502. Transfer of patients to and from hospitals—notice to relatives.
80-2503. Discharge or convalescent release of patients.

80-2501. Location and function of center. The institution located at Lewistown is the "Montana Center for the Aged." The primary function of the center is the care and treatment of senile persons who have been admitted to the state hospital and subsequently transferred to the center. As used in this act "senility" means mental illness resulting from the aging process.

History: En. Sec. 71, Ch. 199, L. 1965.

80-2502. Transfer of patients to and from hospitals—notice to relatives. With the approval of the department of institutions, state hospital may transfer a patient to the center or from the center to the state hospital. With the approval of the department of institutions, the state hospital may transfer a patient residing at the center to the State Pulmonary Disease Hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department of institutions shall notify the patient's parent, guardian or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 72, Ch. 199, L. 1965.

80-2503. Discharge or convalescent release of patients. Upon the request of the superintendent of the center the superintendent of the state hospital may authorize the discharge or release on convalescent status of a patient residing at the center under the same restrictions provided by law for the discharge and release on convalescent status of patients of the state hospital.

History: En. Sec. 73, Ch. 199, L. 1965.

Separability Clause

Section 103 of Ch. 199, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 101 of Ch. 199, Laws 1965 read "Sections 10-101, 10-101.1, 10-102, 10-105, 10-110, 10-111, 10-112, 10-113, 10-114, 10-118, 10-119, 10-120, 10-121, 38-101, 38-102, 38-104, 38-712, 38-713, 38-714, 38-715, 38-716, 38-717, 38-718, 38-719, 38-720, 38-721, 38-722, 38-723, 38-724, 38-802, 38-804, 38-805, 38-806, 38-807, 38-810, 38-811, 38-813, 38-814, 38-815, 38-816, 38-819, 38-1001, 38-1002, 38-1003, 38-1101, 38-1106, 38-1108, 38-1109, 38-1110, 38-1111, 38-1112, 72-144, 80-201, 80-206, 80-207, 80-209, 80-210.1, 80-215, 80-302, 80-303, 80-308, 80-310, 80-311, 80-313, 80-316, 80-320, 80-601, 80-602, 80-603, 80-604, 80-605, 80-606, 80-607, 80-608, 80-701, 80-702, 80-703, 80-704, 80-705, 80-707, 80-707.1, 80-707.2, 80-707.3, 80-707.4, 80-707.5, 80-708, 80-709, 80-710, 80-711, 80-712, 80-713, 80-714, 80-715, 80-719, 80-720, 80-731, 80-732, 80-733, 80-738, 80-

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TITLE 81—STATE LANDS

Chapter
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2. Commissioner of state lands and investments, 81-201, 81-208, 81-209.
3. Selection—classification, appraisal and exchange of lands, 81-304.
4. Leasing of agricultural lands—grazing lands and city and town lots, 81-401, 81-402, 81-405 to 81-407, 81-413, 81-414, 81-419, 81-421, 81-426, 81-428, 81-433, 81-436.
5. Coal mining leases and permits, 81-502.
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19. Satisfaction of farm mortgage loans, Repealed—Section 8, Chapter 184, Laws of 1961.
20. Carey land act board—state engineer, 81-2009, 81-2018.
21. Reclamation of arid lands, Repealed—Section 242, Chapter 147, Laws of 1963; Section 22, Chapter 280, Laws of 1965.

CHAPTER 1—DEPARTMENT OF STATE LANDS AND INVESTMENTS—GENERAL PROVISIONS

Section 81-102. Definitions.

81-102. (1805.2) **Definitions.** In this act, the term "department" shall mean the department of state lands and investments; the term "board" shall mean the state board of land commissioners; the term "commissioner" shall mean the commissioner of state lands and investments; the term "assistant commissioner" shall mean the assistant commissioner of state lands and investments; the term "state land" or "lands" shall mean and include all lands that have heretofore been granted and that hereafter may be granted to the state by the United States for educational purposes or for any other purpose, either directly or through exchange for other lands; all lands that have become the property of the state through deed or devise from any person; and all lands that have become the property of the state through the operation of law, except, however, such of these lands as the state has sold and conveyed through the issuance of patent; and except also lands that are used as building sites, campus grounds, or for experimental purposes by any of the state institutions, and have become the property of such institutions.

History: En. Sec. 2, Ch. 60, L. 1927; amd. Sec. 7, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted from the definition of "state land" or "lands" a clause reading "all lands to which the state has become the owner through a mortgage to the state, either by foreclosure or otherwise"; and deleted from the end of the section a clause that read, "the term 'mortgage land' or 'mortgage lands' shall mean land or lands to which the state has become the owner through a mortgage thereon either by foreclosure or otherwise."

Repealing Clause

Section 8 of Ch. 184, Laws 1961 read "That sections 81-911, 81-914, 81-1901, 81-1902, 75-3730, 75-3731, 75-3732, 75-3733, Revised Codes of Montana, 1947, are hereby expressly repealed."

CHAPTER 2—COMMISSIONER OF STATE LANDS AND INVESTMENTS

Section 81-201. Appointment of commissioner—manner of qualifying.
81-208. Oath of office.
81-209. Salary and compensation.

81-201. (1805.5) **Appointment of commissioner—manner of qualifying.** The governor, by and with the consent of the senate, shall appoint a commissioner of state lands and investments, who shall be the chief administrative and executive officer under the board in all matters except those pertaining to the state forests, who shall not be a member of the state board of land commissioners and whose term of office shall be four years, or until his successor has been appointed and qualified. Before assuming the duties of his office, the commissioner shall take and subscribe to the constitutional oath of office.

History: En. Sec. 5, Ch. 60, L. 1927; amd. Sec. 37, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from the end of the section clauses reading, "and shall provide a surety company bond in the amount of twenty-five thousand dollars ($25,000.00) conditioned for the faithful discharge of his duties, which bond shall be subject to the approval of the board and filed with the secretary of state; the premium thereon shall be paid by the state as the bonds of other state officials."

81-208. (1805.13) **Oath of office.** The assistant commissioner, the chief field agent, and the cashier shall each take and subscribe to the constitutional oath of office before entering upon his duties.

History: En. Sec. 13, Ch. 60, L. 1927; amd. Sec. 38, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from the end of the section a clause and sentences reading, "and shall provide a surety company bond conditioned for the faithful discharge of his duties, which bonds shall be in such amount as the state board of land commissioners may designate, the bonds to be approved by the state board of land commissioners and filed with the secretary of state. The premium on such bonds shall be paid by the state as other bonds of state officials. The board may require any other officer or employee of the department to furnish a surety company bond in such amount as it may designate."

81-209. (1805.14) **Salary and compensation.** The salary of the commissioner shall be not more than ten thousand dollars ($10,000) per annum, payable monthly. The commissioner of state lands and investments shall be paid actual and necessary expenses while engaged in the performance of official duties outside of the state capitol.

History: En. Sec. 14, Ch. 60, L. 1927; amd. Sec. 1, Ch. 176, L. 1949; amd. Sec. 1, Ch. 164, L. 1951; amd. Sec. 1, Ch. 119, L. 1953; amd. Sec. 4, Ch. 225, L. 1963.

Amendment

The 1963 amendment substituted the provision for a maximum salary of $10,000 for a provision fixing the salary at $7,000.

CHAPTER 3—SELECTION—CLASSIFICATION, APPRAISAL AND EXCHANGE OF LANDS

Section 81-304. Exchange of lands with United States and counties—validation of prior actions.

81-304. (1805.19) **Exchange of lands with United States and counties—validation of prior actions.** The state board of land commissioners of the

state of Montana is hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any and all rights of the state of Montana in and to sections sixteen (16) and thirty-six (36) of any township and to any other sections of state lands, provided that the state of Montana shall in lieu of the rights so waived and relinquished receive from the United States other lands of equal or greater value. The amount of state land relinquished under this section in any one year shall not exceed six sections.

The state board of land commissioners of the state of Montana is hereby authorized to accept on behalf of the state of Montana title in fee simple to any land owned by a county in the state of Montana and to convey in exchange therefor state owned land of approximately the same area and of a value not higher than the land received from the county whenever such exchange will result in consolidating the state owned lands into more compact bodies.

All contracts and agreements heretofore entered into between the state board of land commissioners and the United States, or any department thereof, waiving and relinquishing the rights of the state of Montana to sections sixteen (16) and thirty-six (36) in any township in this state, and the selection of lands in lieu or [of] those so relinquished by the state are hereby ratified, confirmed and validated. The land received from the United States, under this provision, must be located in the same county as the relinquished lands, and the present lessees or permittees must be recognized for the continuance of their use of the land on such terms as may be required by the respective agencies.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965.

Amendment

The 1965 amendment deleted "when such sections are situated within or adjoining a federal forest reserve, or within or adjoining other federal land reservations" before the proviso at the end of the first sentence of the first paragraph; substituted the final sentence of the first paragraph for "The lands so obtained by the state of Montana from the federal government in exchange for lands to which the state has waived and relinquished its rights shall preferably be forest lands, it being the main purpose of these provisions to enable both the United States and the state of Montana to consolidate its forest holdings; but if desirable forest land cannot be obtained for such state lands, then other lands may be selected"; and added the second sentence to the third paragraph.

CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

Section 81-401. Policy of state as to appraisal and leasing state land.
81-402. Lease of state lands—crop share rental basis used.
81-405. Renewal leases—preference right of lessee.
81-406. Arbitrators to fix value of improvements—appeal.
81-407. Who may lease—how much and for what length of time.
81-413. Land to be leased in compact bodies—inspections to determine best use of land.
81-414. Change in terms of lease.
81-419. Assignment of leases—preferences—fee.
81-421. Compensation for improvements.
81-426. Filing with state required—fee.
81-428. Proof of termination of lease or pledge to be filed—fee.
81-433. Formula for fixing annual rental.
81-436. Deposit required with bid for lease—retention or return—forfeiture.

81-401. Policy of state as to appraisal and leasing state land. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands.

History: En. Sec. 1, Ch. 207, L. 1945; amd. Sec. 1, Ch. 260, L. 1963.

Amendment

The 1963 amendment substituted "but not less than once during the term of every lease by competent appraisers" at the end of the first sentence, and the entire second sentence, for "as to their rental value, by competent appraisers, or appraiser, and the fair rental value of such lands so determined from time to time"; and deleted other clauses reading, "and that agricultural lands be hereafter leased, or lease term renewed or extended, only upon a crop share basis, and that no lease be made or renewed, or the lease term extended, on any other basis, except in unusual cases, and then only upon approval by the state board of land commissioners set forth in their minutes of proceedings specifying the unusual conditions to justify the leases; and that grazing lands be hereafter leased, or lease term renewed or extended, only upon the basis of animal unit carrying capacity of the land for twelve month grazing period per calendar year, as determined by the appraisal, and at a rate of money for an animal-unit-month to be determined by the legislature from time to time, and in the absence of such determination at the rate of twenty cents (20¢) per animal-unit-month."

81-402. (1805.20) **Lease of state lands—crop share rental basis used.** (1) Under the general direction and control of the state board of land commissioners, the commissioner shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application, provided that, as to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth (¼) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

(2) In unusual cases the commissioner may authorize a lease upon other basis than crop share, but in all such unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the commissioner shall set forth in the records the unusual conditions of the case and the rental to be charged.

(3) The rental rate for all state grazing lands leased and to be leased shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433, R. C. M. 1947, as amended, and provided further that, as to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time under the direction of the commissioner and with the approval of the state board of land commissioners and record made thereof, and such town or city property may be leased at its current appraised rental value for terms of not to exceed five (5) years.

(4) All leases of agricultural or grazing lands, or town or city lots shall be upon condition that the state board of land commissioners may in its discretion, offer said land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965.

Amendments

The 1963 amendment deleted the words "not outstanding (for the next and succeeding years hereafter) and all leases hereafter made, and all renewals of leases" which followed "all leases" in subsection (1); deleted "from and after February 28, 1952" which appeared at the beginning of what is now subsection (3); and substituted "as provided in section 81-433, R. C. M. 1947, as amended" in what is now the opening clause of subsection (3) for "multiplied by the rate per animal-unit-month as fixed in this act."

The 1965 amendment substituted "commissioner" for "board" in two places in subsection (2); inserted "the rental shall at least equal the value of the usual landlord's share prevailing in the district, and" in subsection (2); substituted "the records" for "its minutes of approval" near the end of subsection (2); deleted from the end of present subsection (2) a clause reading, "and by unusual conditions is meant a proposed use of the land for other than the annual production of agricultural crops justifying, in the opinion of the board, a greater money rental of the land than the value of the usual landlord share of annual agricultural crops in the area in which the land is situated"; made a separate subsection (3) from a former proviso to subsection (2); and redesignated former subsection (3) as (4).

81-405. (1805.21) **Renewal leases—preference right of lessee.** A lessee of state land classed as agricultural, grazing, town lot or city lot, or in any of those classes, who has paid all rentals due from him to the state and who has not violated the terms of his lease shall be entitled to have his lease renewed for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions, at the time of the renewal as may by law be imposed as terms of such leases, at any time within thirty (30) days prior to its expiration if no other application or applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. In case such other application or applications have been received, the holder of the lease shall have the preference right to lease the land covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant. Applications for lease of lands in this section referred to shall be given preference in the order of their receipt at the office of the commissioner in Helena.

Notwithstanding the foregoing provisions, the state board of land commissioners shall have the power to withdraw any agricultural or grazing state land from further leasing for such period as the board may determine to be in the best interest of the state of Montana. All bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the state board of land commissioners at the office of the commissioner.

History: En. Sec. 21, Ch. 60, L. 1927; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963.

Amendment

The 1963 amendment rewrote this section, dividing it into two paragraphs and several sentences, rearranging the language, and making substantial changes; for previous text, see parent volume.

81-406. (1805.22) **Arbitrators to fix value of improvements—appeal.** If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell such improvements to the new lessee and they are unable to agree on the value thereof, such value shall be ascertained and fixed by three (3) arbitrators, one of

which shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge shall be paid in equal shares by the owner of the improvements and the new lessee. The value of such improvements so ascertained and fixed shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the commissioner who shall thereupon cause the chief field agent or assistant field agent to examine such improvements and whose decision shall be final. The commissioner shall charge and collect the actual cost of such re-examination to the owner and the new lessee in such proportion as in his judgment justice may demand. The value of such improvements shall be ascertained and fixed as hereinafter and in this act provided.

History: En. Sec. 22, Ch. 60, L. 1927; amd. Sec. 4, Ch. 260, L. 1963.

Amendment

The 1963 amendment inserted "of the type authorized by law at the time they were placed thereon" in the first part of the first sentence.

81-407. (1805.23) **Who may lease—how much and for what length of time.** No persons shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of twenty-one (21) years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section. Any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands shall be for a period other than five (5) or ten (10) years. Leases for city and town lots shall not exceed five (5) years. When a lease expires or is cancelled the commissioner shall immediately so notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding the term of such expired or cancelled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increase rental and the terms of grazing leases hereafter issued shall so provide.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963.

Amendment

The 1963 amendment deleted the words "whether the lands have been received by the state through federal land grants or consist of so-called 'mortgage lands'" which followed "section" at the end of the second sentence; substituted the present fourth and fifth sentences for a sentence reading, "No lease to agricultural or grazing lands, or town or city lots shall be for a longer period of time than ten (10) years"; inserted the sixth sentence (providing for notice of expiration or cancellation of lease); and made minor changes in punctuation.

81-413. (1805.27) **Land to be leased in compact bodies—inspections to determine best use of land.** All lands are to be leased in as compact bodies as possible and care shall be taken not to separate parts of any

section from the section lines or public highways or from any available water supply, or in such form as to make it more difficult to lease the remaining state lands in the section in which they are located. In case there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the commissioner or his field agent at the earliest practical opportunity and determination made, based on his findings, of the highest and best use which can be made of the land or portions thereof, and any lease of said land entered into subsequent to such applications or bids shall be such as to return to the state revenue commensurate with such highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; amd. Sec. 3, Ch. 257, L. 1965.

Amendment

The 1965 amendment substituted the material at the end of the section commencing with "an inspection of the land shall be made" for "an agricultural lease shall be issued; that bid or application shall be accepted which will bring the largest revenue to the state."

81-414. (1805.28) **Change in terms of lease.** Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing any such cultivation, make application to the commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the commissioner to have the necessary changes made therein, and shall agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, the lease shall be subject to cancellation or the lessee shall be liable for twice the regular agricultural rental on the land so cultivated in addition to the grazing rental thereof as may be decided by the board. The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963.

Amendment

The 1963 amendment substituted "the original lease until such time as the first crop is harvested from the cultivated portion of the lease" for "the full rate for the whole of the leased land for grazing purposes, plus the crop share rental on the basis in this act provided for, the portion of the land designated in the application to be cultivated, whether the lessee continues to cultivate such part or not, it being the intention of this provision to protect the interests of the state and to induce lessees to have the leases originally issued for the usage intended to be made of the land" at the end of the first sentence; and added the second sentence.

81-417. (1805.30) **Repealed.**

Repeal

This section (Sec. 30, Ch. 60, L. 1927), relating to leases on a share rental basis, was repealed by Sec. 10, Ch. 257, Laws 1965.

81-419. (1805.32) **Assignment of leases—preferences—fee.** Leases to state lands may be assigned on blanks provided for that purpose by the state board of land commissioners, but no such assignment shall be bind-

ing on the state unless the assignment is filed with the commissioner, approved by him and payment made of the assignment fee of three dollars ($3.00). Preference shall always be given to the applicant who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, his lease shall be subject to cancellation by the state board of land commissioners after hearing, duly held on the facts involved. In any case where state land is subleased by any lessee of state lands, such sublease shall be illegal unless a copy of the sublease accompanied by a fee of two dollars ($2.00) has been filed with the state land office and approved by the commissioner.

History: En. Sec. 32, Ch. 60, L. 1927; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the first sentence from $1.00 to $3.00; and inserted "accompanied by a fee of two dollars ($2.00)" in the last sentence.

81-421. (1805.34) **Compensation for improvements.** A lessee of state lands shall have the right to place upon the lands leased by him, a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of the land which improvements may consist of fences, cultivation and improvement of the land itself, irrigation ditches, sheds, wells and reservoirs, and similar improvements. Whenever another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof. Provided, however, that if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) years crops have been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents ($2.50) per acre, and that in case two (2) or more crops have been raised on the land after the breaking thereof, then in such case the breaking shall not be considered as an improvement to the land. In case of the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained and fixed as provided in this act.

In determining the value of these improvements consideration shall be given not only to the original cost but also to the present condition thereof and to their suitableness for the uses ordinarily made of the lands on which they are located, and also to the general state of cultivation of the land, its productive capacity as effected by former use and also to its condition with reference to noxious weeds whether it is infested with such weeds or free from these pests. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove or dispose of the movable improvements on the land to other parties than the lessee; but if he fails to remove such improvements from the land within sixty (60) days from the date of the expiration of his lease, then all of such improvements shall

become the property of the state unless the commissioner for good cause shown shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under the provisions of section 81-406 or that he has offered to pay the value of such improvements as so fixed and determined or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927; amd. Sec. 4, Ch. 257, L. 1965.

Amendment

The 1965 amendment inserted "directly related to conservation of the land or necessary for proper utilization of the land" after "reasonable amount of improvements" in the first sentence of the first paragraph; made a minor change in arrangement of the language in the first sentence of the first paragraph; and combined the former second and third paragraphs.

81-426. Filing with state required—fee. The pledgee of such lease or the mortgagee of such lease-hold interest shall, within thirty (30) days after receipt of said pledge agreement or mortgage, file the same, or a certified copy thereof, in the office of the state board of land commissioners, and shall pay to said board a fee of two dollars ($2.00) for the filing thereof.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the section from $1.00 to $2.00.

81-428. Proof of termination of lease or pledge to be filed—fee. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which has been pledged or mortgaged as herein provided shall, within thirty (30) days after payment of the indebtedness secured thereby, or within thirty (30) days after the pledge agreement has been terminated or the leasehold interest has been released from the mortgage, file with the state board of land commissioners, due proof of said fact and pay to said board a fee of two dollars ($2.00) for said filing.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the section from $1.00 to $2.00.

81-432. Repealed.

Repeal

This section (Sec. 1, Ch. 190, L. 1949), defining terms relating to grazing rentals, was repealed by Sec. 10, Ch. 257, Laws 1965.

81-433. Formula for fixing annual rental. When used in this section:

"Animal unit" means one cow, one horse, five sheep or five goats.

"Animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for a period of one (1) month.

The state board of land commissioners shall establish the per annum rental rate per section of all grazing lands which are the property of the state of Montana upon the animal-unit-month basis as hereinafter provided.

In fixing the minimum annual rental per section, the following formula shall be used:

The base rental shall be computed by multiplying thirty-two cents (32¢) plus two (2) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(a) The minimum annual rental for grazing lands with an annual carrying capacity of more than fourteen (14) and less than twenty (20) animal units per section is the base rental.

(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than nineteen (19) animal units per section is ten cents (10¢) more than the base rental.

(c) The minimum annual rental for grazing lands with an annual carrying capacity of less than fifteen (15) animal units per section is ten cents (10¢) less than the base rental.

The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the commissioner of state lands and investments made pursuant to section 81-404, R.C.M. 1947.

The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the bureau of agricultural economics of the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963.

Compiler's Note

Chapter 260, Laws 1963, contained no section 7 or 8.

Amendments

The 1959 amendment made numerous minor changes in phraseology; increased the average grazing fee from 18¢ to 24¢ per month; and rewrote the sample computation to conform.

The 1963 amendment inserted the definitions of "animal unit" and "animal-unit-month carrying capacity" at the beginning of the section; completely rewrote the formula for minimum annual rental; deleted the sample computation; and made numerous minor changes in phraseology.

Repealing Clause

Section 3 of Ch. 284, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 284, Laws 1959 read "This act shall be in full force and effect from and after the twenty-eighth day of February, 1960."

Section 9 of Ch. 260, Laws 1963 read "This act shall be effective for the 1964 rental year and thereafter."

References

Cited and applied in Ivins v. Hardy, 134 M 445, 333 P 2d 471, 476.

81-433.1. Repealed.

Repeal

This section (Sec. 2, Ch. 284, L. 1959), relating to an additional animal unit charge applicable in 1960 and 1961, was repealed by Sec. 10, Ch. 257, Laws 1965.

81-435. Repealed.

Repeal

This section (Sec. 4, Ch. 190, L. 1949), authorizing the board to increase or decrease rentals in special circumstances, was repealed by Sec. 10, Ch. 257, Laws 1965.

81-436. Deposit required with bid for lease—retention or return—forfeiture. All persons bidding for the lease of state owned lands shall de-

posit with the commissioner, as evidence of good faith, a certified check, cashier's check or money order in an amount equal to the annual rental bid in the case of grazing land; and an amount equal to one dollar ($1.00) per acre for each acre of agricultural land contained in the lease, in the case of agricultural land on which such bid is made on a crop share basis. The commissioner shall retain the deposit of the successful bidder to be applied on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder, and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the commissioner to the credit of the proper interest and income account in the federal and private revenue fund.

History: En. Sec. 1, Ch. 185, L. 1963.

Title of Act

An act to require a deposit as evidence of good faith by bidders on state land leases.

CHAPTER 5—COAL MINING LEASES AND PERMITS

Section 81-502. Maximum term of lease—form—fee.

81-502. (1805.39) **Maximum term of lease—form—fee.** No coal mining lease shall be issued for a longer term than ten (10) years, but the board may establish such rules and regulations for the renewal of a lease at the expiration of the term as it may deem proper and necessary. The board shall prescribe the form of the lease; the fee for issuing the lease and approving the bond hereinafter provided shall be two dollars and fifty cents ($2.50) payable to the commissioner.

History: En. Sec. 39, Ch. 60, L. 1927; amd. Sec. 5, Ch. 257, L. 1965.

Amendment

The 1965 amendment deleted from the beginning of the section a clause reading, "No person, co-partnership, company or corporation shall be entitled to lease more than one (1) section of land for coal mining purposes, and"; substituted "No coal mining lease" for "no lease" at the beginning of the section; and extended the maximum term of lease from five to ten years.

CHAPTER 7—LEASES AND PERMITS FOR DEPOSITS OF STONE, GRAVEL, SAND AND OTHER MINERALS

Section 81-701. The board may issue leases.

81-701. (1805.52) **The board may issue leases.** Whenever there are found upon state lands to which the title is vested in the state, and which lands have not been sold by the state under certificate of purchase, or otherwise, deposits of stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil or gas, valuable for building, mining or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of such stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel, sand, phosphate or other said deposits; upon such terms and conditions as the board

may determine; provided, however, that all such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands, such gross value to be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board may be determined fair and reasonable, and the fee for issuing the lease shall be the same as for an oil and gas lease. No such lease shall be made for longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both such cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961.

Amendment

The 1961 amendment inserted the word "phosphate" the second place that word appears.

CHAPTER 8—GRANTING OF EASEMENTS FOR PUBLIC PURPOSES

Section 81-802. Easements for school sites and grounds and other public uses.
81-803. Easements on state land—application for—action on.

81-802. (1805.57) **Easements for school sites and grounds and other public uses.** The state board of land commissioners is hereby authorized and empowered to grant easements in state lands for schoolhouse sites and grounds, for public parks, community buildings, cemeteries and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of such properties.

History: En. Sec. 57, Ch. 60, L. 1927; amd. Sec. 6, Ch. 257, L. 1965.

Amendment

The 1965 amendment deleted four sentences from the end of the section. For previous text, see parent volume.

81-803. (1805.61) **Easements on state land—application for—action on.** (1) Application for easement on state land must be made to the state board of land commissioners and shall describe the proposed right of way according to survey, show the necessity for the proposed highway or street or other easement and give such additional information as the board may require. This application shall be accompanied by two exact copies of the official plat of the proposed highway, street or other easement duly verified by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each forty-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot. When deemed necessary by the board, the aforesaid plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. Provided, however, that when the purpose of the right of way applied for is the transmission or distribution of electric energy, or the construction and operation of pipelines or telephone, tele-

graph or radio systems, the aforementioned plats and measurements need not be given, except the description of the location of the center line of the right of way and the entire right of way may be applied for in one application with only one plat of the entire right of way required. Provided further that easements granted under the provisions of this act shall be considered as including permission to install and maintain poles, anchors and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

(2). * * * [Same as parent volume.]

(3) If the state land over or through which such right of way is applied for, is under certificate of purchase or under sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway, street or other easement and to the amount of compensation and damages to be paid must be filed with the board before such right of way shall be granted. The board shall be the judge of how much of such compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much thereof, if any, shall be paid to the purchaser, as the circumstances in each individual case may warrant. The provisions of this paragraph shall apply to all grants of rights of way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965.

Amendment

The 1965 amendment inserted "pipelines or" before "telephone, telegraph or radio systems" in the first proviso in subsection (1); and inserted "street or other easement" after "proposed highway" in the first sentence of subsection (3).

CHAPTER 9—SALE OF STATE LANDS

Section 81-902. **Mineral reservations in state lands.**
81-903. Certain shore lands not subject to sale.
81-908. **Who may purchase and how much.**
81-909. **Sale at public auction, where held.**
81-910. **Notice of sale.**
81-912. **Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.**
81-915. Terms of payment.
81-919. Settlement for improvements.

81-901. (1805.64) Certain state lands not subject to sale.

Leasing of land

This section is superseded by sections 81-1725 to 81-1731 insofar as they are in conflict. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 336.

81-902. (1805.65) **Mineral reservations in state lands.** All coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, except sand, gravel, building stone and brick clay, in lands belonging to the state of Montana, or which may hereafter become the property of the state, which have not already been reserved by the United States, are hereby reserved to the state. All such deposits are reserved from sale except upon a rental and royalty basis as provided by law. In the case of lands sold after this act takes effect, a purchaser of any lands belonging to the state or which

may hereafter become the property of the state shall acquire no right, title, or interest in or to any of such deposits. The state also reserves for itself and its lessees the right to enter upon [such lands] to prospect for, develop, mine and remove such deposits and to occupy and use so much of the surface of the said lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; amd. Sec. 1, Ch. 184, L. 1961.

Compiler's Note

The compiler has inserted the bracketed words "such lands" in the fourth sentence.

Amendment

The 1961 amendment deleted from the end of the third sentence clauses reading, "except that where the oil and gas have not been reserved by the United States the purchaser of mortgage lands shall be entitled to receive a royalty of six and one-fourth per centum (6¼%) of all gas or oil produced from such mortgage lands, such royalty to be payable directly to him by the lessee either in gas or oil or in cash as the purchaser may desire and determine; provided, however, that the purchaser of the mortgaged land shall not have any right to lease such land or any part thereof for oil and gas exploration or production; the state shall have the sole power to lease the land for all mineral purposes"; deleted from the fourth sentence the words "such lands" which now appear in brackets; and deleted a second paragraph, for text of which see parent volume.

81-903. (1805.66) **Certain shore lands not subject to sale.** There is also reserved from sale from all state lands bordering on navigable lakes or bordering on nonnavigable meandered lakes and from all state lands bordering on navigable streams, as the board may deem in the best interests of the state, a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the forty (40) acre tract or government lot abutting the line of high-water mark; provided, however, that if the width of such abutting government lot at its narrowest point is less than one hundred (100) feet, then the strip hereby reserved shall extend to and include the next adjoining forty (40) acre tract or government lot. The land reserved from sale by this section shall be subject to the granting of easements the same as other state lands.

The state board of land commissioners may in its discretion cause any part of the lands bordering on such lakes and on navigable streams which are hereby reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than one hundred and twenty-five feet (125) in width, the width to be measured in the general direction of the abutting water front; but in all such surveys and plats the aforesaid strip of one hundred (100) feet in width along the water front shall be reserved for the use and enjoyment of the public.

Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this act for the leasing of other state lands.

History: En. Sec. 66, Ch. 60, L. 1927; amd. Sec. 7, Ch. 257, L. 1965.

Amendment

The 1965 amendment substituted "nonnavigable meandered lakes" near the beginning of the first paragraph for "such nonnavigable meandered lakes as the board may deem valuable for summer resorts"; and inserted "as the board may deem in the best interests of the state" after "bordering on navigable streams" in the first sentence of the first paragraph.

81-907. (1805.70) **Board to decide when to hold sales etc.**

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

81-908. (1805.71) **Who may purchase and how much.** State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of twenty-one (21) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to an area exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed.

History: En. Sec. 71, Ch. 60, L. 1927; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961.

Amendments

The 1959 amendment added all that part of the first paragraph beginning with the words "or to lands within a federal."

The 1961 amendment in the last sentence of the first paragraph after the words "shall not apply" deleted a phrase which read "to lands acquired by the state in connection with the foreclosure of its mortgages, or."

Effective Date

Section 2 of Ch. 10, Laws 1959 provided the act should be in effect on and after its passage and approval. Approved February 4, 1959.

Sale to Public Agencies

The second paragraph makes it possible for property to be sold to a public corporation or political subdivision, but nothing in the section permits the board of land commissioners to restrict the sale to any such corporation or subdivision. State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

81-909. (1805.72) **Sale at public auction, where held.** All sales of state lands shall be only at public auction held at the county court house of the county in which the lands are located; provided, however, that in case no suitable room can be found in such court house at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such court house by public announcement made at the court house at the time fixed for beginning the sale.

History: En. Sec. 72, Ch. 60, L. 1927; amd. Sec. 3, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section a proviso which read, "and provided further that the procedure for the sale of the so-called 'mortgage lands' acquired by the state through the foreclosure of mortgages, or obtained otherwise in connection with such mortgages, shall be subject to the modifications hereinafter provided."

81-910. (1805.73) **Notice of sale.** The commissioner shall cause notice of every such sale to be given by publication in the official county paper of the county where the sale is to be held once each week through four consecutive weeks next preceding the date of sale. Such notice, shall give the day, date and time of day of the beginning of the sale; shall contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing the same with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands and the appraised value per acre and also the appraised value of each lot. As a general rule nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section.

For the convenience of the bidders, the commissioner may assign the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

The notice shall also give the terms and conditions of sale, and such additional information as the commissioner may deem useful.

History: En. Sec. 73, Ch. 60, L. 1927; amd. Sec. 4, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted from the end of the first paragraph a sentence which read "These limitations need not apply to mortgage lands."

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

81-911. (1805.74) **Repealed.**

Repeal

This section (Sec. 74, Ch. 60, L. 1927), relating to inclusion of mortgage lands, was repealed by Sec. 8, Ch. 184, Laws 1961.

81-912. (1805.75) **Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.** At the time fixed for the sale, the lands shall be offered for sale at auction, in the order they appear in the notice of sale under the personal direction of the commissioner or the assistant commissioner, one of whom shall be present at the sale, and sold to the highest qualified bidder under the following restrictions: No lands shall be sold for less than the appraised value; tillable lands capable of producing agricultural crops shall not be sold for less

than ten dollars ($10.00) per acre, and lands principally valuable for grazing purposes shall not be sold for less than five dollars ($5.00) per acre.

It is further provided that the lessee of the land need not make a higher bid than others, but shall if bidding an equal amount be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

If any successful bidder at such sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars ($50.00) nor more than one thousand dollars ($1000.00) to be determined by the state board of land commissioners according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the commissioner, the attorney general shall institute a suit for the recovery thereof in the name of the state of Montana.

The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; amd. Sec. 5, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted from the end of the first paragraph a sentence which read "These price limitations shall not apply to mortgage lands."

Sale to Lessee

Lessee of state-owned armory building may meet the high bid and be given preference of purchase only at the time of the sale and while bidding is in progress. State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

81-913. (1805.76) **Board may prescribe additional rules and regulations.**

Restrictions

Although this section authorizes the adoption of general rules for the conduct of sales, it does not permit the state board of land commissioners to adopt rules and regulations for each particular sale, and a notice of sale which restricted the sale of a state-owned building to public corporations, agencies or political subdivisions of the state was void. State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

81-914. (1805.77) **Repealed.**

Repeal

This section (Sec. 77, Ch. 60, L. 1927; Sec. 1, Ch. 197, L. 1945), relating to sale of mortgage lands on advertising for sealed bids, was repealed by Sec. 8, Ch. 184, Laws 1961.

81-915. (1805.79) **Terms of payment.** Every purchaser of state land shall pay on the day of sale such portion of the purchase price as he may desire but in no case less than ten per centum (10 %) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars ($25.00), then he shall pay such additional sum

as is necessary to reduce the balance to an even multiple of twenty-five dollars ($25.00); he shall also in all cases pay the sum of five dollars ($5.00) as a fee for each certificate of purchase to be issued to him.

The balance of the purchase price shall draw interest at the rate of five per centum (5 %) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan, which is hereby defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full; provided, however, that the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments; provided, however, that the balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years; and provided further that the board may at any time fix a shorter period than twenty (20) years for the payment of such balance on town and city lots, and different periods of time may be established for different towns and cities as the best interest of the state may appear to demand.

History: En. Sec. 79, Ch. 60, L. 1927; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965.

Amendment

The 1965 amendment deleted from the first paragraph a former first sentence which read: "Every bidder upon state land of any class whatsoever shall accompany his bid with a certified check for not less than ten per centum (10%) of the total appraised sales price as advertised"; and deleted "in cash" after "shall pay" near the beginning of the present first sentence of the first paragraph.

81-918. (1805.82) **Approval or disapproval of sales.**

Rejection of Sale

Where the state board of land commissioners rejected all bids and ordered another sale in order that lessee of state-owned armory building might meet the highest bid and be given preference of purchase, it was not required by this section that the board set forth in their minutes why the original sale was disadvantageous to the state. State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

81-919. (1805.83) **Settlement for improvements.** Whenever any state land has been sold on which there are improvements belonging to a lessee, and some other person than such lessee becomes the purchaser he shall be required to make settlement with such lessee for all improvements on the land belonging to the lessee before the issuing of the certificate of purchase. All provisions of this act relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee shall apply to the settlement between a lessee and the purchaser. If settlement is not reached within six (6) months of date of sale all improvements become property of the state unless the commissioner for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; amd. Sec. 9, Ch. 257, L. 1965.

Amendment

The 1965 amendment added the last sentence.

Repealing Clause

Section 10 of Ch. 257, Laws 1965 read "Sections 81-417, 81-432, 81-433.1, and 81-435, R. C. M. 1947, are repealed."

CHAPTER 10—INVESTMENTS

Section 81-1001. Investment of permanent funds.
81-1005. Investment of income moneys.

81-1001. (1805.98) **Investment of permanent funds.** All moneys belonging to the public school permanent fund and to the other permanent funds of the educational, charitable and penal institutions of the state, and all permanent funds subject to the administration of the board under article XXI of the state constitution, shall be carried by the state treasurer as subfunds in the trust and legacy fund, and shall be safely invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the several counties and cities of the state of Montana; in bonds of the state of Montana or of the United States; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; all of such investments to be subject to the regulations and limitations of this act.

History: En. Sec. 98, Ch. 60, L. 1927; amd. Sec. 2, Ch. 139, L. 1933; amd. Sec. 224, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted "shall be carried by the state treasurer as subfunds in the trust and legacy fund, and" after "state constitution."

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

81-1005. (1805.102) **Investment of income moneys.** Public school interest and income moneys and other income for which there is no immediate demand, may be invested in state general fund warrants and in county warrants upon the general fund, the poor fund, the road fund, or school district warrants, subject to the limitations prescribed in the preceding section; provided, however, that they shall not be invested in such warrants, unless such warrants will be payable at such time as to make the income available when the funds are to be paid out for the purposes for which they are intended.

History: En. Sec. 102, Ch. 60, L. 1927; amd. Sec. 225, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "Public school interest and income moneys and other income" for "Moneys in the public school income fund and in other income funds" at the beginning of the section.

CHAPTER 11—STATE LANDS AND INVESTMENTS—MISCELLANEOUS PROVISIONS

Section 81-1101.1. Board of examiners may accept federal facilities and installations—title in state.
81-1113. Fees.

81-1101.1. Board of examiners may accept federal facilities and installations—title in state. The state board of examiners shall have the power on behalf of the state to accept donations of federal installations, facilities, lands or properties. All title to the installations or facilities shall be vested in the name of the state for its use; provided however, that this act shall not be construed to limit, reduce or supersede the provisions of sections 82-3101 through 82-3104, R. C. M. 1947.

History: En. Sec. 1, Ch. 252, L. 1965.

Title of Act

An act enabling the state of Montana to accept federal facilities, installations, lands or properties; providing for an effective date.

Effective Date

Section 2 of Ch. 252, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

81-1113. (1805.120) **Fees.** The commissioner of state lands and investments is hereby authorized and empowered and it is hereby made his duty to charge and collect the following fees:

Issuing miner's prospecting permit—ten dollars ($10.00) for each permit, or such greater fee as the board may fix in each case.

Issuing any other permit—one dollar ($1.00).

Issuing any lease with or without bond—two dollars and fifty cents ($2.50).

Issuing any certificate of purchase or lieu certificate or converted certificate or purchase contract—five dollars ($5.00).

Approving and entering assignment of lease or certificate of purchase—three dollars ($3.00).

Deed for right of way easement or other easement—five dollars ($5.00).

Patent to any land sold—five dollars ($5.00).

Certified copy of any of the instruments above enumerated, one-half the fee required for issuing the original instrument.

Making township plats showing the state lands therein and giving other information, such fee as the board may fix to be graduated according to the amount of work required.

Certified copy of any other instrument than those above enumerated or of the records of his office shall be furnished at the rate of twenty cents (.20) per folio of one hundred (100) words and one dollar ($1.00) for the certificate.

The board shall fix the fees to be charged and collected for specific services by the commissioner not enumerated in this section.

History: En. Sec. 120, Ch. 60, L. 1927; amd. Sec. 19, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee for approving and entering assignment from $1.00 to $3.00.

CHAPTER 14—STATE FORESTS—FORESTER—TIMBER SALES —FIRE WARDENS

Section 81-1403. State forester—appointment—compensation—term—assistants.
81-1408. Duties of state forester concerning lumber cutting—scaling.
81-1410. Authority to receive moneys.

81-1403. (1830.3) **State forester — appointment — compensation — term—assistants.** The governor, by and with the advice and consent of the senate, shall appoint a state forester to have general charge of all the state's forests. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall not be more than ten thousand eighty dollars ($10,080) per annum, at the discretion of the state land board, together with the actual, necessary expenses while engaged in outside work in connection with his office and its duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be for four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, fire wardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law.

History: En. Sec. 3, Ch. 179, L. 1925; amd. Sec. 1, Ch. 161, L. 1949; amd. Sec. 1, Ch. 192, L. 1953; amd. Sec. 1, Ch. 28, L. 1955; amd. Sec. 1, Ch. 94, L. 1957; amd. Sec. 5, Ch. 225, L. 1963; amd. Sec. 39, Ch. 177, L. 1965.

Amendments

The 1957 amendment raised the salary of the state forester from $6,000 to $7,000 per annum.

The 1963 amendment substituted "shall not be more than ten thousand eighty dollars ($10,080) per annum" in the second sentence for "shall not exceed seven thousand dollars ($7,000.00) per annum."

The 1965 amendment deleted from the end of the section a sentence reading, "He shall give a satisfactory bond to the state of Montana in the sum of ten thousand dollars ($10,000) as a guarantee for the faithful performance of his duties."

Repealing Clause

Section 2 of Ch. 94, Laws 1957 repealed all acts and parts of acts in conflict therewith.

81-1408. (1830.8) **Duties of state forester concerning lumber cutting—scaling.** It shall be the duty of the state forester to supervise all the timber before it is cut, to secure the most complete utilization of all forest products consistent with the current lumbering practice. It shall be his duty to instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and to fix and establish the standard practice in timber sales administration. He shall require that each merchantable log be scaled by the Scribner decimal C. log rule at the small end on the average diameter inside bark taken to the nearest inch, and that deduction be made for all apparent defect, or he shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner decimal C. log

scale. Records of converting factors, units of measure and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale and the name of the scaler. Where the volume of timber involved is not in excess of one million (1,000,000) board feet log scale, the state forester is authorized to designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963.

Amendment

The 1963 amendment combined the former third and fourth sentences into the present third sentence by inserting the word "or" between them; inserted "converting factors, units of measure and" near the beginning of the present fourth sentence; and corrected an apparent typographical error originating in the Laws of 1925.

81-1410. (1830.10) **Authority to receive moneys.** The state treasurer is hereby authorized to receive moneys that may be appropriated or allotted for the purposes named in section 81-1409, by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual.

History: En. Sec. 10, Ch. 179, L. 1925; amd. Sec. 216, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a second sentence reading, "The state treasurer shall deposit such moneys in a special fund to be known as the forester's cooperative work fund, and the state auditor is hereby directed to draw his warrant or warrants for payments from said fund for the purposes aforesaid upon receipt of vouchers approved by the state forester."

81-1412. (1833) **Fire wardens.**

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

81-1414. (1835) **Additional powers of fire wardens.**

Negligence in Fighting Fire

Where plaintiff's property was damaged by fire retardant dropped from defendant's airplane which was hired to aid in fighting a forest fire and plaintiff could not show the lack of proper care under the circumstances, the cause failed under the doctrine of "damnum absque injuria." Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

CHAPTER 15—PORTABLE SAWMILLS ON FOREST LAND—LICENSE AND REGULATION

Section 81-1502. Application for license—fee.

81-1502. (1839.2) **Application for license—fee.** Whenever any person, firm or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state of Montana, such person, firm or corporation shall make application to the state forester of the state of Montana in writing for a license to operate the portable sawmill. The application shall disclose to the state forester the name of the person, firm or corporation contemplating the operation of the sawmill, the location thereof by section, township and range numbers, the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting and the approximate date desired for the commencement of the operation. The application shall be accompanied

by the payment of a fee of two dollars ($2.00), which is fixed as the license fee for the operation of any portable sawmill, to be credited to the earmarked revenue fund, co-operative forest management account.

History: En. Sec. 2, Ch. 124, L. 1931; amd. Sec. 2, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "earmarked revenue fund, co-operative forest management account" for "foresters' co-operative fund" at the end of the section; and made minor changes in phraseology.

CHAPTER 16—TIMBER SALES—GENERAL PROVISIONS

Section 81-1601. Sale of timber—fees for brush disposal and timber stand improvement.

81-1601. (1872) **Sale of timber—fees for brush disposal and timber stand improvement.** The state board of land commissioners shall have the power to sell timber on state lands, at such price per thousand feet as in its judgment shall be for the best interest of the state, but not otherwise; but no such sale of live timber shall be made at a less price than three dollars ($3.00) per thousand feet for white pine, yellow pine and spruce and at a less price than one dollar and a half ($1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the state board of land commissioners shall prescribe; in all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale shall be granted, the timber shall be estimated and appraised under the direction of the state forester, upon the request and subject to the approval of the state board of land commissioners, which estimates and appraisals shall show as nearly as may be the amount and values per thousand feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed.

The state board of land commissioners may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the state forester.

History: Ap. p. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R. C. M. 1921; amd. Sec. 1, Ch. 132, L. 1933; amd. Sec. 219, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF

Section 81-1701. State oil and gas leases—reservations—royalty—waste.
81-1702.2. Power to terminate lease—grounds.
81-1702.4. Biennial report to legislative assembly on oil and gas leases—contents.
81-1704. Royalty—time for payment—computation—minimum royalty.
81-1705. Report of lessees.

81-1707. Rules and regulations—printing—distribution.
81-1709. Bond of lessees.
81-1715. Advertising for bids on re-lease of producing oil or gas land.

81-1701. (1882.1) **State oil and gas leases—reservations—royalty—waste.** The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with the enabling act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing and removing the same upon the terms and conditions herein prescribed, to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana. This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams, and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state of Montana; but in such cases and in all cases where the lands are under lease for grazing, agriculture or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state of Montana the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

Oil and gas leases issued under the provisions of this act shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the state board of land commissioners.

History: En. Sec. 1, Ch. 108, L. 1927; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961.

Amendment

The 1961 amendment deleted the former third and fourth paragraphs which read, "In the case of mortgage lands sold by the state on or subsequent to March 14, 1935, or hereafter sold by it, in which the oil and gas rights belong to and are reserved by and for the state, when the state leases such lands for oil and gas purposes, the holder of such lands under certificate of purchase or other contract, or deed from the state, shall be allowed a royalty of six and one-quarter per centum (6¼%) of the oil and gas produced by such lands, as provided by section 81-902, to be calculated on the same basis as the royalty to be paid to the state as hereinafter provided, and to be paid by the lessee directly to the person or persons entitled thereto, said six and one-quarter per centum (6¼%) royalty to be deducted from the royalty reserved to the state.

"After the date of this act, all such certificate of purchase holders of mortgage lands shall be entitled to one-half (½) of all oil or gas lease rentals, bonus or penalty thereafter received by the state, and such one-half (½) of the oil or gas lease rentals, bonus or penalty shall be credited to the certificate of purchase until such

certificate of purchase is paid in full, and thereafter such one-half (½) of the oil or gas rentals collected by the state board of land commissioners shall be paid to the owner."

81-1702. (1882.2) Area to be leased—limitations—term of leases, etc.

References

Cited or applied in State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 235.

81-1702.2. Power to terminate lease—grounds. In each and every oil and gas lease hereafter granted by the state under chapter 17 of Title 81 of the Revised Codes of Montana, 1947, and acts amendatory thereto, there shall be reserved unto the state board of land commissioners full power and authority to declare termination of the lease at the end of the second year or any subsequent year of the primary term of the lease upon failure of lessee to either (a) commence the drilling of a well for oil and gas upon the leased premises or (b) pay a delay drilling penalty as follows: for the sixth year of such lease one dollar and twenty-five cents ($1.25) per acre per year, and for the remainder of the primary term of the lease such amount per acre per year as said board may, in its discretion, determine; notice of such determination shall be given to the lessee, and if the lessee shall apply for a hearing thereon within ten (10) days after receipt of such notice, the determination shall become final only after such hearing has been held; such annual delay drilling penalty to be paid each year in advance; provided that if a well for oil and gas is commenced, the drilling of such well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas; provided, further, that should the first well drilled be a dry hole, then, and in that event, if a second well is not commenced on the land covered by the lease on or before the next anniversary of the lease following the completion of said well said lease may be terminated by the state board of land commissioners unless the lessee, on or before such anniversary, shall resume the payments of penalties in the amounts hereinabove provided; and upon the resumption of the payment of such delay drilling penalties and their continued payment, said lease shall continue in force during the primary term thereof, as though there had been no interruption in said delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965.

Amendment

The 1965 amendment substituted "for the sixth year" for "for the third and fourth years of such lease the sum of one dollar ($1.00) per acre per year, for the fifth and sixth years" after "(b) pay a delay drilling penalty as follows."

81-1702.4. Biennial report to legislative assembly on oil and gas leases—contents. Each biennium while this act is in effect, the commissioner of state lands shall report in writing to each legislative assembly, before the tenth legislative day, the status of all oil and gas leases on state lands as of the close of the preceding biennium. Such report shall, for each year of the biennium, include at least the following:

(a) The total number of acres of state lands under oil and gas lease;

(b) The total income for each year of the biennium from such leases, showing separately the average amounts per leased acre of bonuses, annual rentals, and nondrilling penalty payments, when applicable;

(c) The number of acres and total income under producing leases;

(d) The number of acres newly leased;

(e) The number of acres for which existing leases were renewed;

(f) The number of acres for which leases were dropped or terminated;

(g) The percentage of leases and of acres leased that were dropped or terminated after the first year of the lease term, after the second year of the lease term, and so continuing for each year of the lease term; and

(h) Comparative figures in each of the foregoing categories for each year of the four preceding bienniums.

History: En. Sec. 2, Ch. 251, L. 1965.

Title of Act

An act to amend section 81-1702.2, Revised Codes of Montana, 1947, which provides for the grounds upon which the state board of land commissioners has power to terminate oil and gas leases issued by it; providing that the commissioner of state lands shall make biennial reports to the legislative assembly on status of oil and gas leases; repealing all acts and parts of acts in conflict herewith; and providing for the effective date of this act.

Repealing Clause

Section 3 of Ch. 251, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 251, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

81-1704. (1882.4) Royalty—time for payment—computation—minimum royalty. In every oil and gas lease granted by the state under the provisions of chapter 17 of Title 81, R. C. M. 1947, and acts amendatory thereto, there shall be reserved to the state as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby, and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the state board of land commissioners at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease; provided that such royalty reservation shall be twelve and one-half per centum (12½ %) on gas, and twelve and one-half per centum (12½ %) on that portion of the average production of oil or casing-head gasoline for each producing well not exceeding three thousand (3,000) barrels for the calendar month; provided, further, that the royalty on gas, including casing-head gas and all gaseous substances, while the same is not sold or used off the premises shall be at the rate of two hundred dollars ($200.00) per well per year or the amount of the annual rental provided in said lease, in lieu of such per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease, and as long as such leased lands contain a well capable of such production and such payment is made the lease shall be considered as a producing lease under the lease terms. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

The lessee shall pay to the state, in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run

into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid, or agreed to be paid, to the lessee, for such oil or gas; or, at the option of the state, exercised in writing by the state board of land commissioners not oftener than every thirty (30) days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions, into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965.

Amendment

The 1965 amendment inserted the reference to chapter 17 of Title 81 near the beginning of the section; added the second proviso to the first sentence of the first paragraph; inserted "on all oil and gas produced and saved and sold or used off the premises" after "royalty" in the second sentence of the first paragraph; and made a minor change in style.

Repealing Clause

Section 2 of Ch. 103, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 103, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

Constitutionality

This section is not unconstitutional on the grounds that it does not obtain the full market value of the estate or interest disposed of as required by the constitution. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

Royalty Rate

When oil lands are leased on a royalty basis and a cash bonus, the bonus constitutes rental for an estate or interest in the land and the legislature in leasing oil lands is under obligation to obtain the full market value of the estate or interest disposed of on a rental basis, as well as for the sale of the land itself. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 237. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

Where in the leasing of lands for oil and gas, there was a bid carrying a royalty of 16⅔% with a bonus of $39,040 and another bid carrying a royalty of 12½% with a bonus of $68,000, the board of land commissioners was not authorized to accept the bid carrying the royalty of 16⅔% since the legislature has the responsibility of determining the method of arriving at the market value of leases, and by this section the legislature has determined that the royalty basis shall be 12½%. In the instant case it is impossible to determine whether the bid carrying the higher royalty but lesser bonus to be better than the bid carrying the 12½% royalty but a higher bonus, in advance of drilling. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 238.)

Under the constitution it is the legislature and not the land board that must fix the rules governing the sale and leasing of state land, and the method of arriving at the market value thereof. State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 236. (Dissenting opinion, 131 M 65, 307 P 2d 234, 238.)

81-1705. (1882.5) **Report of lessees.** On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the commissioner of state lands for the preceding calendar month, which report shall be in such form as the state board of land commissioners may prescribe. Such report shall show the amount of oil or gas produced and saved during such preceding month, the price obtained, the total amount of all sales, and such additional information as may be required and shall be signed by the lessee or some responsible person having knowledge thereof, and shall be accompanied by payment of the amount due the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser thereof, provided, that where the amount of royalty due from any lease

is determined by the state board of land commissioners to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semi-annually.

History: En. Sec. 5, Ch. 108, L. 1927; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963.

Amendment

The 1963 amendment added the proviso at the end of the section.

81-1707. (1882.7) **Rules and regulations—printing—distribution.** The board shall have the power and authority to prescribe such rules and regulations and to do and perform all acts and things not inconsistent with the enabling act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules and regulations, not inconsistent with law, governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically. Copies of the rules and regulations and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927; amd. Sec. 1, Ch. 144, L. 1961.

Amendment

The 1961 amendment added the second and third sentences.

Repealing Clause

Section 2 of Ch. 144, Laws 1961 repealed all acts and parts of acts in conflict therewith.

81-1709. (1882.9) **Bond of lessees.** The state board of land commissioners shall require lessees of oil and gas leases and assigns thereof to furnish bonds to the state in form and substance prescribed by law or by regulations of the board and in amount, or amounts, adequate to indemnify the state against loss, damage or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease or assignment thereof, including the payment of any money penalties fixed by the board; provided, that no bond in excess of twenty thousand dollars ($20,000.00) shall be required under any one lease for any one year; and provided further that any lessee of oil and gas leases or any assignee of such leases, may, at his discretion, furnish one bond in a sum to be fixed by the board not to exceed fifty thousand dollars ($50,000.00) covering all leases in which any interest is acquired, in which event separate bonds relating to individual leases or interests therein shall not be required.

History: En. Sec. 9, Ch. 108, L. 1927; amd. Sec. 1, Ch. 186, L. 1957.

Amendment

The 1957 amendment added the "and provided further clause."

Repealing Clause

Section 2 of Ch. 186, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 186, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

81-1715. (1882.15) **Advertising for bids on re-lease of producing oil or gas land.** In the case of all leases issued under the provisions in force prior to the effective date of section 1 of chapter 122, Laws of 1953, where oil or gas is being produced, the state board of land commissioners shall

at the expiration thereof, or termination for any cause, advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction on the terms then existing for such leasing; provided, however, that any person, association, firm or corporation who held such lease at the expiration thereof shall have the privilege of re-leasing the same at such highest responsible bid offered therefor upon such terms and conditions as may be prescribed by the state board or the legislative assembly.

In the case of all leases issued under the provisions in force prior to the effective date of section 1 of chapter 122, Laws of 1953, where oil or gas is not being produced, the board may at the expiration thereof, or termination for any cause, advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction, if in the judgment of the board such advertising and public auction will result in leasing of the land on terms advantageous to the state.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933; amd. Sec. 1, Ch. 104, L. 1965.

Compiler's Note

Section 1 of chapter 122, Laws of 1953, referred to above, amended section 81-1702, and the effective date thereof was February 28, 1953.

Amendment

The 1965 amendment substituted "the provisions in force prior to the effective date of section 1 of chapter 122, Laws of 1953" for "this act" near the beginning of the first paragraph and again near the beginning of the second paragraph; substituted "is being produced" for "has been produced" near the beginning of the first paragraph; added "on the terms then existing for such leasing" and the proviso to the first paragraph; substituted "is not being produced" for "has not been produced" near the beginning of the second paragraph; substituted "the board may" for "the board shall" in the first part of the second paragraph; deleted "more" before "advantageous" near the end of the section; and deleted from the end of the section provisions reading, "provided, however, that when the lands are advertised for re-leasing, any person, association, firm or corporation who held such lease at the expiration thereof, whether oil or gas had been produced thereunder or not, shall have the privilege of re-leasing the same at such highest responsible bid offered therefor, upon such terms and conditions as may be prescribed by the said board or by the legislative assembly; and the board shall have the privilege of rejecting any and all bids."

Repealing Clause

Section 2 of Ch. 104, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 104, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

References

Cited or applied in State ex rel. Strandberg v. State Board of Land Commrs., 131 M 65, 307 P 2d 234, 235.

81-1725. Leasing of state lands for underground storage, etc.

Constitutionality

This statute is constitutional. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

CHAPTER 19—SATISFACTION OF FARM MORTGAGE LOANS

(Repealed—Section 8, Chapter 184, Laws of 1961)

81-1901, 81-1902. (1937, 1939) Repealed.

Repeal

These sections (Secs. 10, 12, Ch. 124, L. 1917), relating to satisfaction of farm mortgage loans, were repealed by Sec. 8, Ch. 184, Laws 1961.

CHAPTER 20—CAREY LAND ACT BOARD—STATE ENGINEER

Section 81-2009. Water conservation board authorized to negotiate with other states regarding interstate waters.
81-2018. Appropriation of water by state.

81-2001 to 81-2005. (1949 to 1953) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 114, L. 1903; Sec. 1, Ch. 128, L. 1911), relating to organization and expenses of the Carey land act board, were repealed by Sec. 22, Ch. 280, Laws 1965.

81-2006. (1954) Repealed.

Repeal

This section (Sec. 6, Ch. 114, L. 1903), creating the office of state engineer, was repealed by Sec. 1, Ch. 280, Laws 1965.

81-2007. (1955) Repealed.

Repeal

This section (Sec. 7, Ch. 114, L. 1903; Sec. 1, Ch. 43, L. 1909; Sec. 1, Ch. 128, L. 1911), relating to the duties of the state engineer, was repealed by Sec. 22, Ch. 280, Laws 1965.

81-2008. (1956) Repealed.

Repeal

This section (Sec. 18, Ch. 147, L. 1909), relating to the examination of state mineral lands, was repealed by Sec. 1, Ch. 280, Laws 1965.

81-2009. (1956.1) Water conservation board authorized to negotiate with other states regarding interstate waters. The state water conservation board is hereby authorized and empowered to negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution and allocation of the water of any stream or streams flowing from Montana into such other state or states or flowing from such other state or states into Montana. He [It] shall co-operate with such other state or states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of such compacts. Provided that the authority hereby given and the duties hereby imposed are limited to the preparation and proposal of any such compact and no such compact or agreement shall be anywise binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in such compact.

History: En. Sec. 1, Ch. 27, Ex. L. 1933; amd. Sec. 2, Ch. 280, L. 1965.

Compiler's Note

The compiler has inserted the bracketed word "It" at the beginning of the second sentence.

Amendment

The 1965 amendment substituted "The state water conservation board" for "The state engineer" at the beginning of the section; and deleted "and it is hereby made his duty in addition to the other duties of his office" after "authorized and empowered" near the beginning of the section.

Repealing Clause

Section 1 of Ch. 280, Laws 1965 read "Sections 81-2006, 81-2008, 81-2010, and 81-2012, R. C. M. 1947, are hereby repealed."

81-2010. (1957) Repealed.

Repeal

This section (Sec. 8, Ch. 114, L. 1903; Sec. 40, Ch. 177, L. 1965), relating to the bond and oath of the state engineer, was repealed by Sec. 1, Ch. 280, Laws 1965.

81-2011. (1958) **Repealed.**

Repeal

This section (Sec. 9, Ch. 114, L. 1903; Sec. 1, Ch. 118, L. 1913), relating to the salary and annual report of the state engineer, was repealed by Sec. 1, Ch. 129, Laws 1963, and by Sec. 242, Ch. 147, Laws 1963. Section 6, Ch. 225, Laws 1963, purported to amend this section; however, under the rule of section 43-515, the purported amendment was void and did not revive the section.

81-2012. (1959) **Repealed.**

Repeal

This section (Sec. 10, Ch. 114, L. 1903), relating to the office of the state engineer, was repealed by Sec. 1, Ch. 280, Laws 1965.

81-2013. (1960) **Repealed.**

Repeal

This section (Sec. 11, Ch. 114, L. 1903; Sec. 1, Ch. 128, L. 1911; Sec. 47, Ch. 177, L. 1965), relating to an assistant secretary for the Carey land act board, was repealed by Sec. 22, Ch. 280, Laws 1965.

81-2014. (1961) **Repealed.**

Repeal

This section (Sec. 12, Ch. 114, L. 1903; Sec. 1, Ch. 128, L. 1911), relating to the salary of the assistant secretary of the board, was repealed by Sec. 1, Ch. 129, Laws 1963.

81-2015. (1962) **Repealed.**

Repeal

This section (Sec. 13, Ch. 114, L. 1903), relating to construction contracts of the Carey land act board, was repealed by Sec. 22, Ch. 280, Laws 1965.

81-2016. (1963) **Repealed.**

Repeal

This section (Sec. 14, Ch. 114, L. 1903), relating to the Carey Land Act fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

81-2017. (1964) **Repealed.**

Repeal

This section (Sec. 1, Ch. 117, L. 1907), relating to cancellation and compromise of outstanding Carey land act bonds and claims, was repealed by Sec. 22, Ch. 280, Laws 1965.

81-2018. (1965) **Appropriation of water by state.** The state board of land commissioners is hereby authorized, through the state water conservation board as its agent, or otherwise, at its discretion, to appropriate any available waters for use upon state lands, and to authorize the construction of irrigation work for said lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals, and said water right laws are hereby made available and may be applied by said board or its agent.

History: En. Sec. 2, Ch. 85, L. 1905; re-en. Sec. 2254, Rev. C. 1907; re-en. Sec. 1965, R. C. M. 1921; amd. Sec. 3, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in the first sentence.

CHAPTER 21—RECLAMATION OF ARID LANDS

(Repealed—Section 242, Chapter 147, Laws of 1963; Section 22, Chapter 280, Laws of 1965)

81-2101 to 81-2121. (1966 to 1986) **Repealed.**

Repeal

These sections (Secs. 1 to 15, 17 to 22, Ch. 105, L. 1905; Sec. 1, Ch. 62, L. 1951; Sec. 1, Ch. 52, L. 1953; Sec. 1, Ch. 53, L.

1953), relating to the reclamation of land under the Carey land act and other federal laws, were repealed by Sec. 22, Ch. 280, Laws 1965.

81-2122. (1987) **Repealed.**

Repeal

This section (Sec. 23, Ch. 105, L. 1905), relating to fees payable to the board, was repealed by Sec. 242, Ch. 147, Laws 1963.

81-2123. (1988) **Repealed.**

Repeal

This section (Sec. 24, Ch. 105, L. 1905), relating to settlements on arid lands, was repealed by Sec. 22, Ch. 280, Laws 1965.

81-2124. (1989) **Repealed.**

Repeal

This section (Sec. 25, Ch. 105, L. 1905), relating to the disposition of proceeds of sale or lease of lands, was repealed by Sec. 242, Ch. 147, Laws 1963.

81-2125 to 81-2130. (1990 to 1995) **Repealed.**

Repeal

These sections (Secs. 26, 27, Ch. 105, L. 1905; Secs. 1 to 4, Ch. 123, L. 1911), relating to administration, sale and lease of arid lands, were repealed by Sec. 22, Ch. 280, Laws 1965.

TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

Chapter 1. State controller, 82-106, 82-107, 82-109 to 82-109.4, 82-110, 82-112.
3. Athletic commission, state, 82-308.
4. Attorney general, 82-401.
5. Clerk of supreme court, 82-503.
6. Deputies—appointment by certain officers—clerkship of consolidated boards, 82-601, 82-602.
7. Embalmers and funeral directors, state board of, Repealed—Section 24, Chapter 41, Laws of 1963.
10. Examiner, state, 82-1008, 82-1011, 82-1014 to 82-1016.
11. Examiners, state board of—state printing contract and supplies, 82-1101. 82-1105, 82-1131, 82-1131.1, 82-1137, 82-1138, 82-1152.
12. Fire marshal, state, 82-1202, 82-1230, 82-1231.
13. Governor—powers—records—secretary, 82-1301, 82-1309, 82-1310.
15. Hail insurance, state board of, 82-1505, 82-1507, 82-1511, 82-1516, 82-1517, 82-1519.
16. Laboratory commission, Repealed—Section 33, Chapter 271, Laws of 1963.
19. Purchasing department and agent, 82-1902 to 82-1906, 82-1909, 82-1914, 82-1916, 82-1919, 82-1924 to 82-1926.
20. Reporters of decisions of supreme court—publication and distribution of reports, 82-2002, 82-2004.
21. Intergovernmental cooperation, 82-2112, 82-2113.
22. Secretary of state, 82-2202, 82-2212.
28. Council for welfare and health, Repealed—Section 101, Chapter 199, Laws of 1965.
30. Natural resources and development council, 82-3001.
31. State agency for surplus property, 82-3102, 82-3104 to 82-3106.
32. State records, 82-3205.
33. Department of administration, 82-3301 to 82-3322.
34. Open meetings of public agencies, 82-3401 to 82-3403.
35. Committee on problems of aging, 82-3501 to 82-3506.

CHAPTER 1—STATE CONTROLLER

Section 82-106. State controller—appointment—qualifications.
82-107. Controller's oath of office.
82-109. Duties of controller—expenditure control.
82-109.1. Authorizations for salary payments and operating expenditures—submission to state controller.
82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims.
82-109.3. Form of claims—disapproval by controller—appeal to board of examiners.
82-109.4. Salary schedules maintained by controller.
82-110. Duties of controller—to act with state auditor and state examiner—uniform accounting system—examinations.
82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—director of budget to first submit budget to governor.

82-102. (306) Repealed.

Repeal

This section (Sec. 2, Ch. 86, L. 1909; Sec. 5, Ch. 194, L. 1951), relating to powers and duties of state controller, and examination of state institutions, was repealed by Sec. 3, Ch. 81, Laws 1961.

82-106. State controller—appointment—qualifications.—The office of state controller for the state of Montana is hereby created and established. The state controller shall be appointed by the governor with the advice and consent of the senate. He shall be responsible to the governor and shall serve at the pleasure of the governor. Said state con-

troller (hereinafter referred to as the controller) shall be a qualified elector of Montana and shall be selected with special reference to his training, experience, ability, and knowledge of the principles and practices of public finance and governmental accounting.

History: En. Sec. 1, ch. 194, L. 1951; amd. Sec. 1, Ch. 98, L. 1961.

Amendment

The 1961 amendment substituted the second and third sentences for sentences which read: "It shall be the duty of the governor, not later than the first day of April, 1951, to appoint a competent person to discharge the duties of said office until the next meeting of the senate, when he shall nominate and, by and with the advice and consent of the senate, shall appoint a competent person to fill such office. Succeeding appointments shall be made on or before the last day of January during the biennial session of the legislative assembly next preceding the commencement of the term for which the appointment is made"; and substituted "public finance" for "public budgeting" near the end of the section.

82-107. Controller's oath of office. The controller shall take the constitutional oath of office.

History: En. Sec. 2, Ch. 194, L. 1951; amd. Sec. 2, Ch. 98, L. 1961; amd. Sec. 41, Ch. 177, L. 1965.

Amendments

The 1961 amendment deleted, at the beginning of the section, sentences reading: "The controller shall be appointed for a term of eight (8) years, commencing on the first of April next following the date of his appointment, and shall be ineligible to succeed himself. He shall receive a salary of seven thousand dollars ($7,000.00) per annum, and all necessary traveling expenses."

The 1965 amendment deleted from the end of the section a clause reading, "and shall execute to the state of Montana a bond in the penal sum of fifty thousand dollars ($50,000.00), to be approved by the state board of examiners."

82-109. Duties of controller—expenditure control. (a) The controller shall establish a system of financial control to the end that the functioning of the various departments of the state may be improved, that duplications of work done by different state departments and employees may be eliminated, the public service improved, and the cost of government reduced.

(b) It shall be the duty of the controller to apply expenditures against cash funds wherever possible before using the general fund appropriations.

(c) The controller may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, department, bureau, commission, institution or agency. The amount of the respective appropriation made by the legislative assembly shall then, except with respect to items of capital outlay and repairs and replacement, be made available to such office, department, bureau, commission, institution or agency in quarterly allotments, provided, however, that the quarterly allotment shall be based on the requirements of that office, department, bureau, commission, institution or agency during that quarter based on previous experience of that office, department, bureau, commission, institution and agency and not on a pro rata quarterly basis.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959.

Amendment

The 1959 amendment deleted most of former subd. (a). For previous text see parent volume.

82-109.1. Authorizations for salary payments and operating expenditures—submission to state controller. All authorizations for salary pay-

ments, operating expenditures, including all travel, or capital expenditures, including repairs and replacements, shall be given by the officer or governing board of the department concerned, and a record shall be kept by such officer or governing board of all such authorizations and expenditures. Claims for any such expenditures must be submitted to the state controller and must bear the signature of the authorizing officer or employee, certifying the following: "This claim is approved for the sum of $_____. It is mathematically and clerically correct, a proper and necessary expense, and a legal charge against appropriation or fund No. _____."

History: En. Sec. 1, Ch. 97, L. 1961.

Title of Act

An act to relieve the state board of examiners of the duty to approve liquidated claims and to provide for the preaudit of such claims by the state controller after authorization of the expenditure by the officer or governing board of the department concerned; to amend the following sections to delete the requirement that the board of examiners process claims for expenditures: section 79-104, Revised Code of Montana, 1947, relating to the state auditor, section 79-202. Revised Codes of Montana, 1947, relating to the state treasurer, sections 82-1101, 82-1105, and 82-1152, Revised Codes of Montana, 1947, relating to the state board of examiners, sections 93-306 and 93-314, Revised Codes of Montana, 1947, relating to district judges, sections 94-9825 and 94-9826, Revised Codes of Montana, 1947, relating to the board of pardons, section 44-410, Revised Codes of Montana, 1947, relating to the state law library, sections 44-514 and 44-515, Revised Codes of Montana, 1947, relating to the historical society library, section 19-121, Revised Codes of Montana, 1947, relating to the Montana fine arts commission, section 23-1815, Revised Codes of Montana, 1947, relating to the state board of canvassers, section 26-123, Revised Codes of Montana, 1947, relating to the fish and game commission, section 32-1620, Revised Codes of Montana, 1947, relating to the state highway commission, sections 46-202, 46-224, 46-228, Revised Codes of Montana, 1947, relating to the livestock sanitary board, sections 46-1909 and 46-1914, Revised Codes of Montana, 1947, relating to the livestock commission, section 46-2306, Revised Codes of Montana, 1947, relating to the grass conservation commission, section 59-540, Revised Codes of Montana, 1947, relating to the board of examiners, section 77-151, Revised Codes of Montana, 1947, relating to the national guard, section 80-747, Revised Codes of Montana, 1947, relating to the state prison, section 80-748, Revised Codes of Montana, 1947, relating to county sheriffs and section 82-2212, Revised Codes of Montana, 1947, relating to the secretary of state; and to repeal sections 59-541, 82-1109, 82-1110, 82-1111, 82-1112, 82-1120, 46-1910 and 46-1911, Revised Codes of Montana, 1947; and containing a repealing clause.

82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims. The state controller shall pre-audit all liquidated or settled claims against the state, including claims by transportation companies arising from state transportation requests, ascertaining that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged and that the appropriation is available and adequate, and (4) the expenditure is not illegal. If the volume of claims will not permit such audit of each claim, item (2) above may be accomplished on a spot-check basis. The pre-auditing conducted by the state controller shall be concerned only with the form and accuracy of the claim and supporting documents, and the availability of the funds, and in no event shall the state controller interpose his judgment regarding the wisdom or expediency of any item or items of expenditure. If no appropriation is available for the payment of a settled or liquidated claim, the controller shall audit it and, if it is a valid claim, transmit it to the

governor through the office of director of the budget for presentation to the legislative assembly.

Any unliquidated or unsettled claims submitted to the state controller shall be transmitted to the state board of examiners to be processed as provided by law.

History: En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963.

Amendment

The 1963 amendment inserted "including claims by transportation companies arising from state transportation requests" near the beginning of the section.

82-109.3. Form of claims—disapproval by controller—appeal to board of examiners. The state controller may prescribe the claim form and may establish in writing, rules and regulations not inconsistent with law governing the preparation, submittal and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the state controller shall be returned to the operating agency with an explanation in writing of why the claim was disapproved. The officer or governing board of a department which is aggrieved by the disapproval of a claim by the controller, may appeal to the state board of examiners.

History: En. Sec. 3, Ch. 97, L. 1961.

82-109.4. Salary schedules maintained by controller. The state controller shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the state controller shall alter his schedule accordingly when notified by the authorizing agency. However, no changes in personnel or salary status shall be authorized that will cause a department to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislative assembly.

History: En. Sec. 4, Ch. 97, L. 1961.

82-110. Duties of controller—to act with state auditor and state examiner—uniform accounting system—examinations. (a) The controller, acting with the state examiner, shall prescribe and install uniform accounting and reporting for the several state boards, bureaus, departments, commissions and institutions in addition to those enumerated in section 82-102 hereof, showing the receipt, use and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof which shall be submitted to the respective heads of such boards, bureaus, departments, commissions and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the controller for inspection by the members of the legislative assembly.

(b) The controller shall receive copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating work done in preparing such audits and reports, he shall have the power and it shall be his duty to examine into all financial affairs of every state board, commission,

bureau, department and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling him to properly perform any of the duties imposed upon him by this act.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959.

Compiler's Note

Section 82-102, referred to in subsection (a), was repealed by Sec. 3, Ch. 81, Laws 1961.

Amendment

The 1959 amendment deleted the words "state auditor and" where they appeared before "state examiner" near the beginning of each of subds. (a) and (b).

82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—director of budget to first submit budget to governor. Whenever any agency of the federal government shall require as a condition to obtaining federal aid that the state agency intrusted with the administration of such aid shall submit a budget of the contemplated expenditures for administrative purposes, the proposed budget for such expenditures shall, before it is submitted to the federal authorities for approval, first be submitted by such state agency to the director of the budget. The director of the budget shall then transmit said budget to the governor who shall approve the same or shall modify or alter it so as to meet his approval and shall submit the budget as approved by him to the legislative assembly; when the legislative assembly is not in session and additional and unanticipated federal aid becomes available, requiring an amended and/or supplemental appropriation request, then any agency, department or institution receiving such federal aid shall submit said amended and/or supplemental administrative appropriation request through the director of the budget to the governor for his approval before submission to the appropriate federal agency.

History: En. Sec. 1, Ch. 210, L. 1953; amd. Sec. 10, Ch. 158, L. 1959.

Amendment

The 1959 amendment, at the end of the first sentence, substituted "by such state agency to the director of the budget" for "to the state controller in conformity with section 82-109(a)"; substituted the portion of the second sentence preceding the semicolon therein for "The state controller shall then transmit said budget to the legislative assembly for approval" and substituted "director of the budget" near the end of the section for "state controller."

Repealing Clause

Section 11 of Ch. 158, Laws 1959 read "That sections 79-1002, 79-1003, 79-1004, 79-1004.1, 79-1005, and 79-1010, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

CHAPTER 3—ATHLETIC COMMISSION, STATE

Section 82-308. Report of ticket sales—tax on gross receipts—disposition of tax moneys received.

82-308. (4559) **Report of ticket sales—tax on gross receipts—disposition of tax moneys received.** Every club, corporation or association which may hold or exercise any of the privileges conferred by this act, shall, within twenty-four hours after the determination of any boxing, sparring or wrestling contest or exhibition, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets

sold for such boxing, sparring or wrestling contest or exhibition and the amount of gross proceeds thereof, and such other matters as the commission may prescribe, and shall also within the said time pay to the county treasurer a tax of five per centum (5%) of its total gross receipts after deducting the federal admission tax if any from the sale of tickets of admission to such boxing, sparring or wrestling match or exhibition, which shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection and be applied to the payment of the expenses of the commission, and the salary of the secretary of the commission, as herein provided. And the money so collected shall be paid to the state treasurer to be kept and held in the earmarked revenue fund and used exclusively for the purposes and expenses above specified and as prescribed in section 78-302. Such funds to be drawn upon and expended only upon proper and legal claims. All such moneys in the said fund from time to time may be invested by the state treasurer in any manner provided for by law for the investment of the state moneys.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R. C. M. 1921; amd. Sec. 8, Ch. 103, L. 1927; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 271. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

Chapter 147, Laws 1963, substituted "in the earmarked revenue fund" in the second sentence for "in a separate and special fund to be designated as the 'veterans' memorial fund'"; deleted "made against the fund, first presented to and approved by the state board of examiners" from the end of the next to last sentence; and substituted "such moneys" for "money" near the beginning of the last sentence.

Chapter 271, Laws 1963, substituted "for the purposes and expenses above specified and as prescribed in section 78-302" at the end of the second sentence for "for the purposes herein provided" and a sentence reading, "The moneys so received and held by the state treasurer in such special fund shall be used and devoted for the expenses above specified and the balance to be held and retained exclusively for the use of the veterans' memorial fund commission as prescribed in section 78-302"; and deleted from the end of the next to last sentence the words "first presented to and approved by the state board of examiners."

CHAPTER 4—ATTORNEY GENERAL

Section 82-401. General duties.

82-401. (199) **General duties.** It is the duty of the attorney general:

1 to 10. * * * [Same as parent volume.]

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, state board of education, board of state prison commissioners, and other duties prescribed by law.

12. * * * [Same as parent volume.]

History: En. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R. C. M. 1921; amd. Sec. 89, Ch. 199, L. 1965. Cal. Pol. C. Sec. 470.

Compiler's Note

Section 9, Ch. 268, Laws of 1965, added a subsection 13 to this section, reading "To create and supervise within his office a position of criminal investigation." However, by the terms of section 11 of the 1965 act, the act expires June 30, 1967. See note below.

Amendment

The 1965 amendment deleted "board of pardons" and "state board of commissioners for the insane, deaf, dumb and blind" from subsection 11.

Criminal Investigator

Chapter 268, Laws of 1965, effective from July 1, 1965 to June 30, 1967, created a position of criminal investigator within the office of the attorney general. The act read: "An act establishing a position of criminal investigator; providing an appropriation; and amending section 82-401, R. C. M. 1947.

"Section 1. (1) There is a position of criminal investigator within the office of the state attorney general. This person shall be located at Deer Lodge, Montana.

"(2) The attorney general shall appoint the investigator and other necessary assisting personnel and fix their compensation.

"(3) The investigator shall be a person qualified by experience, training and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

"Section 2. As used in this act:

"'Investigator' means the position of criminal investigator within the attorney general's office.

"Section 3. The investigator shall have the power and duty to:

"(1) Assist city, county and state law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

"(2) Assist various law enforcement schools held in the state for law officers when requested;

"(3) Co-operate with the bureau of criminal identification and investigation.

"Section 4. The investigator shall be reimbursed for actual and necessary expenses and per diem for each trip, by the city, county or state agency requesting that trip. If more than one agency requests the trip the expenses and per diem shall be divided proportionately.

"Section 5. A person with a known criminal record shall not be permitted access to the files of the investigator, nor shall anyone else without the order of a district judge or a supreme court justice.

"Section 6. The investigator and assisting personnel shall not be covered by the public employees' retirement system.

"Section 7. The state aeronautics commission shall co-operate with the investigator in providing air transportation for him.

"Section 8. State custodial and educational institutions, and other state agencies having laboratory facilities shall co-operate with the investigator.

"Section 9. Section 82-401, R. C. M. 1947, is amended by adding subsection 13 to read as follows:

"82-401. It is the duty of the attorney general:

"(13) To create and supervise within his office a position of criminal investigator.

"Section 10. (1) (a) 'Personal services' means all salaries and wages of full-time, part-time and temporary employees of the investigator's office and includes the state contribution for social security and industrial accident insurance. It does not include a state contribution for public employees' retirement.

"(b) 'Operation' means all expenditures for personal services and all ordinary and necessary expenditures for the investigator's office, investigator and assisting personnel.

"(c) 'Capital' means those items which do not lose their identity, which are adaptable to continuing uses and have a life of more than one (1) year. Capital shall be charged with the replacement of existing capital assets as well as new acquisitions but does not include expenditures for construction of buildings, or purchase of land.

"(2) (a) The following moneys are appropriated for the biennium ending June 30, 1967:

	For the fiscal year ending June 30, 1966	For the fiscal Year ending June 30, 1967
ATTORNEY GENERAL CRIMINAL INVESTIGATOR		
(i) From the general fund for personal services. Salary for the investigator shall not exceed $8,400.00 per year for each year of the biennium.	$10,000.00	$10,000.00
(ii) From the general fund for operation. Laboratory equipment which is not capital shall be included here.	$5,000.00	—0—
(iii) From the general fund for capital. Capital may include necessary office equipment, necessary 2-way radio equipment, and laboratory equipment, which will not duplicate accessible laboratory equipment. This shall not include a car.	$5,000.00	—0—

"Section 11. This act shall be in full force and effect from July 1, 1965 to June 30, 1967."

Effect of Opinion

While executive construction of the law, acquiesced in by the legislative assembly, is not binding on the court, yet such interpretation is persuasive and will be upheld if not erroneous. State ex rel. Ebel v. Schye, 130 M 537, 305 P 2d 350, 353.

82-404. (201) **Repealed.**

Repeal

This section (Sec. 462, Pol. C. 1895), relating to the bond of the attorney general, was repealed by Sec. 51, Ch. 177, Laws 1965.

82-405. (202) **Repealed.**

Repeal

This section (Sec. 1, Ch. 13, L. 1907; Sec. 1, Ch. 77, L. 1915; Sec. 1, Ch. 116, L. 1917; Sec. 1, Ch. 112, L. 1919), relating to assistant attorneys general, was repealed by Sec. 1, Ch. 129, Laws 1963.

82-407, 82-408. (204, 205) **Repealed.**

Repeal

These sections (Sec. 1, Ch. 77, L. 1915), relating to a law clerk and stenographers in the attorney general's office, were repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 5—CLERK OF SUPREME COURT

Section 82-503. Fees.

82-503. (372) **Fees.** He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars ($10.00) payable by the appellant, and five dollars ($5.00) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, ten dollars ($10.00), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five ($5.00); for making transcripts, copies of papers or record, fifteen cents (15¢) per folio; for comparing any document requiring a certificate, five cents (5¢) per folio; for each certificate under seal, one dollar ($1.00).

All fees collected by him must be paid into the state treasury, all of which shall be credited to the credit of the state general fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "general fund" for "law library fund" at the end of the section.

Unauthenticated Copies of Opinions

Clerk is not required to make a charge for uncertified and unauthenticated copies of opinions. Anderson v. Hinman, 138 M 397, 357 P 2d 895, 902.

82-504. (373) **Duties.**

Fees Received by Clerk

The state is entitled to any moneys collected by the clerk while acting in his official capacity and performing the duties enumerated and the converse is equally true that the state is not entitled to any fees except those set by law. Anderson v. Hinman, 138 M 397, 357 P 2d 895, 901.

82-505. (374) **Settlements, when and how made.**

Fees for Copies of Opinions

Charges for furnishing uncertified and unauthenticated copies of opinions by the clerk of court are not required to be paid into the state treasury. Anderson v. Hinman, 138 M 397, 357 P 2d 895, 902.

82-507. (376) **Repealed.**

Repeal

This section (Sec. 876, Pol. C. 1895), relating to the bond of the clerk, was repealed by Sec. 51, Ch. 177, Laws 1965.

CHAPTER 6—DEPUTIES—APPOINTMENT BY CERTAIN OFFICERS—CLERKSHIP OF CONSOLIDATED BOARDS

Section 82-601. Deputy state officers.
82-602. Consolidation of clerkships.

82-601. (122) **Deputy state officers.** The state treasurer, state auditor, clerk of the supreme court, and the state superintendent of public instruction shall each appoint a deputy, who, in the absence of the principal, or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled.

The secretary of state shall appoint a chief deputy and a deputy, who in the absence of the principal shall perform all the duties of office. In the case of a vacancy in the office of secretary of state, the chief deputy shall perform all the duties of the office until such disability be removed or vacancy filled.

Such deputy or deputies shall subscribe, take and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from the third paragraph a second sentence reading, "The principal shall be responsible under his official bond for all the official acts of his deputy and may revoke his appointment at his pleasure, and may require the deputy to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other state bonds; provided, nothing herein contained shall be construed to authorize an increase of the number of employees in any office."

82-602. (123.1) **Consolidation of clerkships.** The clerk of the state board of examiners, in addition to his duties as clerk of said board, shall perform all of the duties of clerk on the board of state prison commissioners.

History: En. Sec. 1, Ch. 74, L. 1925; amd. Sec. 90, Ch. 199, L. 1965.

Amendment

The 1965 amendment deleted a first sentence reading, "The clerkship of the state board of examiners and the clerkship of the consolidated boards are hereby consolidated"; and deleted "each of the following boards: the board of pardons, the board of commissioners for the insane, and" after "duties of clerk on" near the end of the section.

CHAPTER 7—EMBALMERS AND FUNERAL DIRECTORS, STATE BOARD OF

(Repealed—Section 24, Chapter 41, Laws of 1963)

82-701 to 82-711. Repealed.

Repeal

These sections (Secs. 1 to 9, 11, 12, Ch. 67, L. 1941; Sec. 1, Ch. 151, L. 1943), relating to embalmers and funeral directors, were repealed by Sec. 24, Ch. 41, Laws 1963. For present law, see sections 66-2701 to 66-2717. Sections 136 and 137, Ch. 147, Laws 1963, purported to amend sections 82-702 and 82-709, respectively; however, under the rule of section 43-515, the amendments were void and did not revive the sections.

CHAPTER 10—EXAMINER, STATE

Section 82-1008. Examination of accounts of cities, towns and certain school districts, and fire districts.
82-1011. Salary and expenses.
82-1014. Examination of accounts and books of state institutions.
82-1015. Duty of fiscal officers and other employees to aid in examination.
82-1016. Report of examination and audit.

82-1008. (215) **Examination of accounts of cities, towns and certain school districts, and fire districts.** The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers.

For such examination a fee of seven dollars fifty cents ($7.50) per hour per man shall be charged and said fee must be paid by such district into the state treasury and the state treasurer shall accredit such payment to the special examiners' fund.

A copy of the examiner's report shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained.

The state examiner shall have the power and authority and it shall be his duty to make at least one (1) examination during each fiscal year the books and accounts of all fire districts and volunteer fire departments created and existing in unincorporated areas, towns and villages supported by a mill levy.

For such examination a fee of seven dollars fifty cents ($7.50) per hour per man shall be charged and said fee shall be paid by the fire district or fire department into the state treasury and credited by the state treasurer to the earmarked revenue fund.

A copy of such audit shall be filed with the clerk and recorder of the county in which such fire district or fire department exists.

History: En. Sec. 1, Ch. 84, L. 1913; re-en. Sec. 215, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1937; amd. Sec. 1, Ch. 169, L. 1955; amd. Sec. 1, Ch. 137, L. 1959; amd. Sec. 1, Ch. 125, L. 1963; amd. Sec. 1, Ch. 141, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 125 and once by Ch. 141. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

The 1959 amendment increased the fee set out in the third paragraph from $30 to $60 per day per man, deleted the words "together with actual transportation expense" which followed "per day per man" in the third paragraph, and inserted in the third paragraph the words "shall be charged and the said fee."

Chapter 125, Laws 1963 substituted "seven dollars fifty cents ($7.50) per hour" for "sixty dollars ($60) per day" in the third paragraph; and added the fifth, sixth, and seventh paragraphs.

Chapter 141, Laws 1963, deleted a proviso reading, "provided, however, that the trustees of any school district must, during the month of June of each calendar year, notify the state examiner if such examination will be required, in which event it shall be the duty of the state examiner to make an examination of such school district during the fiscal year following receipt of said notice" at the end of the second paragraph; deleted a former fourth paragraph which read: "In lieu of the examination by the state examiner as above provided, said school districts may provide for the examination of the books and accounts thereof by a qualified public accountant of the state of Montana"; and deleted the words "or accountant's" following the word "examiner's" near the beginning of the present fourth paragraph.

Repealing Clauses

Section 2 of Ch. 137, Laws 1959 and Sec. 2 of Ch. 141, Laws of 1963 repealed all acts and parts of acts in conflict therewith.

82-1011. (218) Salary and expenses. The salary of the state examiner, for all services rendered in any capacity whatever, shall be not more than ten thousand dollars ($10,000) per year, and in addition thereto the state shall pay the necessary office and travel expenses of himself and assistants.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1911; re-en. Sec. 218, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1953; amd. Sec. 7, Ch. 225, L. 1963.

Amendment

The 1963 amendment substituted the provision for a maximum salary of $10,000 for a provision fixing the salary at $7,000.

82-1012. (219) Repealed.

Repeal

This section (Sec. 1, Ch. 149, L. 1907; Sec. 2, Ch. 93, L. 1911; Sec. 1, Ch. 96, L. 1929; Sec. 1, Ch. 180, L. 1939), relating to assistants, deputies, and clerks in the examiner's office, was repealed by Sec. 1, Ch. 129, Laws 1963.

82-1013. (223) Repealed.

Repeal

This section (Sec. 496, Pol. C. 1895; Sec. 499, p. 109, L. 1897; Sec. 499, Ch. 100, L. 1903; Sec. 499, Ch. 149, L. 1907), relating to bonds of the state examiner and his assistants, was repealed by Sec. 51, Ch. 177, Laws 1965.

82-1014. Examination of accounts and books of state institutions. The state examiner is hereby directed to examine and audit each fiscal year the accounts and books of all institutions in the department of institutions, state school for the deaf and blind and the various units of the university of Montana, and has authority to employ such clerical, accounting and other personnel as may be deemed necessary by him to carry out the provisions of this act. Such examination shall include, within reason, but not limited to, the verification of all fees collected and their disposition, a statement of all income including federal and private grants, the tabulation of expenditures made from each of the appropriations granted by the legislative assembly, the consideration of all claims and expenditures as to their fund allocation and validity, the analysis of the sources of funds applied to the redemption of revenue bonds outstanding, the segregation of expenses allocated to buildings and activities designated as self-liquidating, and any investigation as may be requested by the governing boards of the institutions.

The state examiner shall also conduct an annual examination and audit of the office of state controller, ex officio state purchasing agent. Such examination shall include the verification of all fees collected and their disposition, and shall also include an examination and appraisal of the

procedures followed by the purchasing division for the purchase of supplies and capital equipment for state agencies.

History: En. Sec. 1, Ch. 279, L. 1959; amd. Sec. 1, Ch. 81, L. 1961; amd. Sec. 91, Ch. 199, L. 1965.

Title of Act

An act directing the state examiner to examine the accounts and books of the university system for the biennium ending June 30, 1959 and each biennium thereafter; repealing all acts and parts of acts in conflict therewith; and providing for an effective date.

Amendments

The 1961 amendment inserted "each fiscal year" in the first sentence of the first paragraph; inserted "the state soldiers' home, state hospital, state prison, state tuberculosis sanitarium, home for senile men and women, state industrial school, state training school and hospital, Montana children's center, state vocational school for girls, state school for the deaf and blind and" in the first sentence of the first paragraph; deleted "system" after "university of Montana" in the first sentence of the first paragraph; deleted "for the biennium ending June 30, 1959, and each biennium thereafter" after "university of Montana" in the first sentence of the first paragraph; inserted "a statement of all income including federal and private grants" in the second sentence of the first paragraph; substituted "the governing boards of the institutions" for "the Montana state board of education" at the end of the first paragraph; and added the second paragraph.

The 1965 amendment substituted "all institutions in the department of institutions" for "the state soldiers' home, state hospital, state prison, state tuberculosis sanitarium, home for senile men and women, state industrial school, state training school and hospital, Montana children's center, state vocational school for girls" after "accounts and books of" in the first sentence of the first paragraph.

82-1015. **Duty of fiscal officers and other employees to aid in examination.** It shall be the duty of the fiscal officer and other employees of each educational unit to furnish to the state examiner or his representative, when requested by him, all information, records, and books of account required in the course of the examination, and to render such assistance as may be required.

History: En. Sec. 2, Ch. 279, L. 1959.

82-1016. **Report of examination and audit.** The state examiner shall report to the governor and the governing boards of the various institutions, the results of such examination and audit, including any comments, criticism, and recommendations, which report shall be available to the legislative council and legislative assembly.

History: En. Sec. 3, Ch. 279, L. 1959; amd. Sec. 2, Ch. 81, L. 1961.

Amendment

The 1961 amendment substituted "the governing boards of the various institutions" for "the state board of education of the state of Montana", and inserted the words "including any comments, criticism, and recommendations."

Repealing Clauses

Section 4 of Ch. 279, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 81, Laws 1961 read "Section 82-102, Revised Codes of Montana, 1947, is repealed."

Effective Date

Section 5 of Ch. 279, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 17, 1959.

CHAPTER 11—EXAMINERS, STATE BOARD OF—STATE PRINTING CONTRACT AND SUPPLIES

Section 82-1101. Board, how composed.
82-1105. Records.
82-1131. Advertising for bids—when required—contracts—requirements—advertising—prohibiting subterfuge to avoid intent of this act.

82-1131.1. Repeal clause.
82-1137. State printing—union label—requirements of responsibility—state preferences.
82-1138. Penalty.
82-1152. Affidavit of printer—allowance of claims.

82-1101. (232) **Board, how composed.** The governor, secretary of state, and attorney general constitute a board of examiners. This board is not required to examine settled or liquidated claims for expenditures of any office or department of state government.

History: Sections 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R. C. M. 1921; amd. Sec. 7, Ch. 97, L. 1961. Cal. Pol. C. Secs. 654-685.

Amendment

The 1961 amendment substituted the second sentence for the following: "with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. No claim against the state, except salaries and compensation of officers fixed by law, must be passed upon by the legislative assembly without first having been considered and acted upon by said board."

82-1103. Repealed.

Repeal

This section (Sec. 1, Ch. 69, L. 1943; Sec. 1, Ch. 116, L. 1949; Sec. 1, Ch. 35, L. 1953), relating to exchange of surplus commodities by state institutions, was repealed by Sec. 101, Ch. 199, Laws 1965.

82-1105. (234) **Records.** The board must keep a record of all its proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record.

History: Sec. 228, Rev. C. 1907; re-en. Sec. 234, R. C. M. 1921; amd. Sec. 8, Ch. 97, L. 1961. See also history of Sec. 82-1101.

Amendment

The 1961 amendment deleted a second sentence which read "and all claims must be entered upon the minutes of the board before the same are acted upon."

82-1109. (238) **Repealed.**

Repeal

This section (Sec. 1, Ch. 138, L. 1953; Sec. 1, Ch. 110, L. 1955; Sec. 1, Ch. 21, L. 1957), relating to claims for which appropriations have been made, was repealed by Sec. 32, Ch. 97, Laws 1961.

Compiler's Note

Section 1 of Ch. 127, Laws 1961, purported to amend this section. However, since the section had been repealed by Sec. 32, Ch. 97, Laws 1961, the attempted amendment was nugatory under the provisions of section 43-515.

82-1110 to 82-1112. (239 to 241) **Repealed.**

Repeal

These sections (Secs. 233 to 235, Rev. C. 1907), relating to approval, disapproval, and transmittal of claims, were repealed by Sec. 32, Ch. 97, Laws 1961.

82-1113. (242) **Unsettled claims.**

Property Taken by the State

The right to just compensation for private property taken for use by the state is a specific constitutional right; where plaintiff sold land to the state and a dispute later arose as to the value of improvements on the land and plaintiff's interest therein, plaintiff was entitled to bring suit against the state and it was not necessary for him to proceed under this section. Alexander v. State Highway Commission, 142 M 93, 381 P 2d 780.

82-1120. (249) **Repealed.**

Repeal

This section (Sec. 243, Rev. C. 1907), relating to claims not approved by the board of examiners, was repealed by Sec. 32, Ch. 97, Laws 1961.

82-1122 to 82-1124. (251 to 253) Repealed.

Repeal

These sections (Secs. 19 to 21, p. 187, L. 1891), relating to the examination of the books of the state auditor and state treasurer, were repealed by Sec. 14, Ch. 80, Laws 1961.

82-1125. (254) Repealed.

Repeal

This section (Sec. 702, Pol. C. 1895; Sec. 248, Rev. C. 1907; Sec. 254, R. C. M. 1921; Sec. 10, Ch. 80, L. 1961), establishing a furnishing board, was repealed by Sec. 33, Ch. 271, Laws 1963.

82-1126 to 82-1130. (255 to 259) Repealed.

Repeal

These sections (Secs. 703 to 707, Pol. C. 1895), relating to the board of supplies and furnishing board, were repealed by Sec. 14, Ch. 80, Laws 1961.

82-1131. (259.1) Advertising for bids—when required—contracts—requirements—advertising—prohibiting subterfuge to avoid intent of this act. In all cases, it shall be unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of said state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state where the amount involved is one thousand dollars ($1,000.00) or more without first advertising in at least one (1) issue each week for three (3) consecutive weeks in two (2) newspapers published in the state, one (1) of which must be published at the seat of government, and the other in the county where the work is to be performed calling for sealed bids to perform such work and stating the time and place, when and where such bids will be considered. All such jobs of work shall be done, caused to be done, or contracted for only after competitive bidding. In any case, if no bid for such job of work shall be accepted such work shall not be done or accomplished, and the same shall be readvertised, from time to time, until the same shall be awarded to a qualified competitive bidder therefor.

History: En. Sec. 1, Ch. 149, L. 1927; amd. Sec. 1, Ch. 142, L. 1961.

Amendment

The 1961 amendment inserted "In all cases" at the beginning of the section; in the first sentence, inserted "to do, to cause to be done, or" before "to let any contract", deleted the word "repair" which appeared after "alteration", inserted "adjacent" before "grounds", and increased the amount specified from $500 to $1,000; and added the second and third sentences.

DECISIONS UNDER FORMER LAW

Scope of Section

This statute deals with the procedure to be followed when and if a contract is to be awarded. It does not set forth the instances when a contract must be let, nor does it prohibit state officers and employees from performing work on state buildings. Montana Chapter National Electrical Contractors Assn. v. State Board of Education, 137 M 382, 352 P 2d 258, 259.

82-1131.1. Repeal clause. The provisions of this act (82-1131, 82-1131.1) shall not repeal to any extent the provisions of section 80-731, Revised Codes of Montana, 1947, and, further, this act shall not apply to work done by inmates at an institution in the department of institutions.

History: En. Sec. 2, Ch. 142, L. 1961; amd. Sec. 92, Ch. 199, L. 1965.

Title of Act

An act amending section 82-1131, Revised Codes of Montana, 1947, relating to bidding requirements for construction, alteration and improvement of buildings and grounds on behalf of the state of Montana; raising minimum per job figure from five hundred dollars ($500.00) to one thousand dollars ($1,000.00), and requiring all jobs over said figure to be done only after competitive bidding, excepting from the effect of this act the provisions of section 80-731, Revised Codes of Montana, 1947, and further excepting inmates at the Montana industrial school at Miles City, Montana, the Montana state training school at Boulder, Montana, and the Montana children's center at Twin Bridges, Montana; repealing all acts and parts of acts in conflict herewith; providing effective date.

Amendment

The 1965 amendment deleted a former first sentence, which read: "Any act or part of any act in conflict herewith, in whole or in part, is hereby repealed to the extent of such conflict"; and substituted "an institution in the department of institutions" for "the Montana industrial school at Miles City, Montana, or the Montana state training school at Boulder, Montana, or the Montana children's center at Twin Bridges, Montana" at the end of the section.

Effective Date

Section 3 of Ch. 142, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 3, 1961.

82-1132. (259.2) **Repealed.**

Repeal

This section (Sec. 2, Ch. 149, L. 1927), relating to contents of the advertisement required by section 82-1131, was repealed by Sec. 33, Ch. 271, Laws 1963.

82-1134. (259.4) **Repealed.**

Repeal

This section (Sec. 4, Ch. 149, L. 1927), invalidating cost plus contracts, was repealed by Sec. 33, Ch. 271, Laws 1963.

82-1137. (260) **State printing—union label—requirements of responsibility—state preferences.** All printing for which the state of Montana is chargeable, including reports of state officers, state boards, pamphlets, blanks, letter heads, envelopes, and printed matter of every kind and description, save and except certificates of appointment and election to office, must be printed within the state of Montana by a responsible bidder, if his bid is not more than 2% higher than the bid of the lowest bidder who is a nonresident of this state; unless local facilities for production of a particular sort of printed matter are not available, and shall bear the label of the branch of the international typographical union, the allied printing trades council or the amalgamated lithographers of America of the locality in which they are printed, except under the following conditions:

1. Printing firms not having the use of the said labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(a) As a condition to consideration as a responsible bidder printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(b) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions preva-

lent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under this act.

(c) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of this act, but nothing in these provisions shall be construed as exempting such bidders from any provisions of the act, and such bidders shall also be required to conform to all of its provisions.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R. C. M. 1921; amd. Sec. 1, Ch. 242, L. 1963.

Amendment

The 1963 amendment substituted all of the section following "certificates of appointment and election to office" for "shall have the label of the branch of the international typographical union of the city in which they are printed."

82-1138. (261) **Penalty.** Any officer of the state who shall accept any printed matter, save and except certificates named in the preceding section, for which the state is chargeable, in whole or in part, or who is found to have had printed matter produced, under conditions other than as set forth in this act, shall be subject to a fine of fifty dollars for each and every offense.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 255, Rev. C. 1907; re-en. Sec. 261, R. C. M. 1921; amd. Sec. 2, Ch. 242, L. 1963.

Amendment

The 1963 amendment substituted "in whole or in part, or who is found to have had printed matter produced, under conditions other than as set forth in this act" for "which does not bear a label indicating that it was printed in an office under the jurisdiction of the international typographical union."

Effective Date

Section 3 of Ch. 242, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

82-1140 to 82-1143. (263 to 266) **Repealed.**

Repeal

These sections (Secs. 709 to 712, Pol. C. 1895), relating to the board of examiners' duties as ex officio board of supplies, were repealed by Sec. 14, Ch. 80, Laws 1961.

82-1145. (268) **Repealed.**

Repeal

This section (Sec. 714, Pol. C. 1895), relating to the employment of clerical help by state boards, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-1146. (269) **Repealed.**

Repeal

This section (Sec. 1, Ch. 26, L. 1907), relating to contracts for liability or indebtedness in excess of appropriations, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-1148. (274) **Repealed.**

Repeal

This section (Sec. 2, Ch. 108, L. 1921; Sec. 2, Ch. 176, L. 1931), relating to the compensation of assistants in executive state offices, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-1152. (279) **Affidavit of printer—allowance of claims.** No claim against the state for legal advertising or any of the publications covered by this act shall be allowed unless there is attached to said claim the certification of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of

Montana for the publication for which claim is made, is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. And it is hereby declared to be unlawful to make any claim against or to charge or attempt to charge, the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication, set in the same sized type and published for the same number of insertions.

History: En. Sec. 4, Ch. 157, L. 1921; re-en. Sec. 279, R. C. M. 1921; amd. Sec. 9, Ch. 97, L. 1961.

Amendment

The 1961 amendment substituted the portion of the first sentence preceding the parentheses for "The state board of examiners shall not allow or approve for payment any claim against the state of Montana by any publisher or printer, natural, corporate or quasi-corporate, nor shall the state auditor draw his warrant for the payment of any such claim against the state of Montana, for legal advertising or any of the publications covered by this act, in the event there is not attached to said claim the affidavit of the publisher or printer."

CHAPTER 12—FIRE MARSHAL, STATE

Section 82-1202. Powers of the state fire marshal.
82-1230. Oath of marshal and deputy.
82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.

82-1202. (2737.1) **Powers of the state fire marshal.** In addition to the powers heretofore granted, the state fire marshal shall have powers as per sections following:

1 and 2. * * * [Same as parent volume.]

3. That the state fire marshal shall make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection and to the public safety.

4 and 5. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "state department of institutions" for "board of examiners" in subsection 3.

82-1205, 82-1206. (2739, 2740) **Repealed.**

Repeal

These sections (Sec. 3, Ch. 148, L. 1911; Sec. 1, Ch. 122, L. 1919; Sec. 1, Ch. 126, L. 1919; Sec. 1, Ch. 131, L. 1919), relating to salaries of the fire marshal and his assistant, were repealed by Sec. 1, Ch. 129, Laws 1963.

82-1219. (2753) **Removal of dilapidated buildings—proceedings.**

Cross-Reference

Application of Montana Rules of Civil Procedure to abatement proceedings, see M. R. Civ. P., Rule 81(a) Table A.

82-1230. (2760) **Oath of marshal and deputy.** The state fire marshal shall file the oath of office required of all public officers; and, provided, further, that any special deputy fire marshal appointed under the provisions of this act shall also file the oath of office required of all public officers.

History: En. Sec. 23, Ch. 148, L. 1911; re-en. Sec. 2760, R. C. M. 1921; amd. Sec. 42, Ch. 177, L. 1965.

Amendment

The 1965 amendment substituted "shall file" after "The state fire marshal" at the

beginning of the section for "shall be required to give a surety bond, furnished by a company authorized to transact surety business in this state, in the sum of one thousand dollars, for the faithful performance of his duties, and shall subscribe and file therewith."

82-1231. (2761) **Tax on fire insurance premiums for maintenance of state fire marshal's office.** Each insurer authorized to effect insurance on risks enumerated in subsection two of section 11-1919, doing business in this state shall pay to the state auditor and commissioner of insurance ex-officio, during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of one-fourth of one per cent (¼ of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959.

Amendment

The 1959 amendment substituted "insurer" for "insurance company" at the beginning of the section; substituted "subsection two of section 11-1919" for "paragraph one of section 40-1409"; substituted "taxes on premiums" for "license fees" and deleted the words "provided in section 40-1302" where they followed "required by law to be paid by it."

Repealing Clause

Section 2 of Ch. 182, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 182, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

82-1237. (2769) **Liability of offenders for damages and costs.**

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY

Section 82-1301. Powers and duties of governor.
82-1309. Enemy attack upon United States and governor and those in line for succession unable to act—calling of emergency session of state senate—election of president pro tempore to assume governorship.
82-1310. Emergency temporary seat of government—designation.

82-1301. (124) **Powers and duties of governor.** In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

1 to 13. * * * [Same as parent volume.]

14. He must discharge the duties of member of the board of examiners, of member of the state board of education, of member of the state board of land commissioners, and of member of the board of state prison commissioners.

15. * * * [Same as parent volume.]

History: En. Sec. 370, Pol. C. 1895; re-en. Sec. 145, Rev. C. 1907; re-en. Sec. 124, R. C. M. 1921; amd. Sec. 94, Ch. 199, L. 1965. Cal. Pol. C. Sec. 380.

Amendment

The 1965 amendment deleted "and of the board of commissioners of the insane, deaf, dumb, and blind" at the end of subsection 14.

82-1309. Enemy attack upon United States and governor and those in line for succession unable to act—calling of emergency session of state

senate—election of president pro tempore to assume governorship. If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate and speaker of the house are killed or rendered unable to serve as governor, the chairman of the board of county commissioners of the state's most populous county, as determined by the last preceding official United States census shall have the power and it shall be his duty forthwith to call an emergency session of the state senate at any safe location within the state for the purpose of electing a president pro tempore who shall then assume the office of governor. Should such chairman of the board of county commissioners of the most populous county be dead or unable to act, the chairman of the board of the next most populous county shall exercise the power granted by this section.

History: En. Sec. 1, Ch. 148, L. 1959.

Title of Act

An act to provide for emergency succession to the office of governor in the event of enemy attack upon the United States and to provide for selection of an emergency seat of government in case of such attack; providing for a repealing clause and an effective date.

82-1310. Emergency temporary seat of government—designation. If, because of an enemy attack upon the United States, the city of Helena should be rendered unsafe, the governor may designate any safe location within the state as an emergency temporary seat of government until such time as the city of Helena is again safe for occupancy.

History: En. Sec. 2, Ch. 148, L. 1959.

Repealing Clause

Section 3 of Ch. 148, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 148, Laws 1959 provided the act should be in effect immediately after its passage and approval. Approved March 7, 1959.

CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section 82-1505. Reinsurance.
82-1507. Scope and object of levy—reserve.
82-1511. State treasurer's duty—transfer of funds—warrants—transfers to county and state general fund.
82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.
82-1517. Payment of losses.
82-1519. Compensation of chairman and officers—financial report.

82-1505. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to grain crops which occur from year to year and in order to enable the state hail insurance board to spread the effect of these variations more evenly over all years, the state board is hereby authorized to negotiate for and to secure reinsurance of a part of the risk in any year when the need of such reinsurance appears advisable to the board. The state board is hereby authorized to use moneys from hail insurance levies for the purchase of such reinsurance whenever it appears to the board that such reinsurance is necessary and advisable.

History: En. Sec. 3, Ch. 37, L. 1943; amd. Sec. 74, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the first sentence, substituted "state hail insurance board" for "state hail insurance fund" and, in the second sentence, substituted "hail insurance levies" for "hail insurance fund."

82-1507. (352) Scope and object of levy—reserve. (1) In making the levy provided in the preceding section the state board of hail insurance shall provide for:

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve.

3. For the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants and losses as the same shall be settled and adjusted by the said board including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

4. If at the end of any hail insurance season the state board of hail insurance determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made, and which funds are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the state board of hail insurance may, at its discretion, refund to the farmers insured for the said year, on a pro rata or percentage basis the excess.

(2) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it shall not increase the levy enough in any year so that such addition to the reserve will exceed five per cent (5%) of the maximum risk written for that year and provided further, that the reserve shall not exceed the amount of one million two hundred thousand dollars ($1,200,000.00).

(3) The reserve hereby created shall be deposited in the agency fund and the state board of hail insurance is hereby granted the power to draw from its moneys in said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses, and provided further, that whenever there are no unpaid losses for prior years and whenever in any one (1) year the cost of administration, interest and losses for the current year shall be less than the sum of sixty cents (60¢) per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the state board of hail insurance shall not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance.

History: En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R. C. M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963.

Amendments

The 1957 amendment added paragraph 4 to subsection (1).

The 1963 amendment substituted "reserve" for "reserve fund" at the end of paragraph 2 of subsection (1), near the beginning of paragraph 3 of subsection (1), in paragraph 4 of subsection (1), two places in subsection (2), and in the latter part of subsection (3); deleted from paragraph 4 of subsection (1) second and third sentences reading, "A list containing the names, addresses, and other information that the said board determines necessary shall be presented for the approval of the state board of examiners of the state of Montana. The state auditor of

the state of Montana is hereby authorized to draw and issue warrants for the payment of the same"; substituted "deposited in the agency fund" for "a continuous fund" near the beginning of subsection (3); and inserted "its moneys in" before "said fund" in subsection (3).

Repealing Clause

Section 2 of Ch. 20, Laws 1957 repealed all acts and parts of acts in conflict therewith.

82-1511. (355) State treasurer's duty—transfer of funds—warrants—transfers to county and state general fund. The state treasurer shall receive all moneys paid to him under this act and shall place same to the credit of the agency fund and may from time to time transfer to the earmarked revenue fund such sums as the state board may deem necessary and proper to pay the expenses of administration. All moneys collected by the board shall be deposited in the agency fund and all losses shall be paid from that fund. All other costs are administrative expenses and shall be paid from the board's account in the earmarked revenue fund. If registered warrants be presented and there be no money to pay the same, such warrants shall be registered and thereafter bear interest at the rate of four per cent (4%) per annum until called for payment by the state treasurer. If at any time more funds are in the earmarked revenue fund than the board estimates are needed for administrative expense, the state treasurer may on the order of the state board of hail insurance transfer such funds back to the agency fund as the state board may direct.

Upon warrants drawn by order of the state board of hail insurance the state treasurer shall pay out of the board's account in the agency fund to the county treasurer of each county where state hail insurance coverage is in force one per cent (1%) of the gross annual levies made and collected in such county under the hail insurance act for the use of the county as the board of county commissioners may determine.

Upon authorization from the state board of hail insurance the state treasurer shall transfer out of the board's account in the agency fund to the general fund of the state of Montana two per cent (2%) of the gross annual levies made and collected in the state of Montana.

History: En. Sec. 4, Ch. 169, L. 1917; amd. Sec. 1, Ch. 183, L. 1921; re-en. Sec. 355, R. C. M. 1921; amd. Sec. 8, Ch. 40, L. 1923; amd. Sec. 1, Ch. 189, L. 1961; amd. Sec. 75, Ch. 147, L. 1963.

Amendments

The 1961 amendment added the second and third paragraphs.

The 1963 amendment substituted "the agency fund" for "a fund to be known as the state hail insurance fund" or "the hail insurance fund" in the first sentence of the first paragraph and near the end of the first paragraph; substituted "the earmarked revenue fund" for "the hail insurance administrative fund" or "the administrative fund" in the first and last sentences of the first paragraph; deleted from the end of the first sentence of the first paragraph the words "together with such sums as may be needed to pay all the warrants registered against the hail insurance administrative fund, plus the accrued interest thereon, and shall pay out of such funds on warrants drawn by the state auditor by order of the state board of hail insurance"; inserted the second and third sentences in the first paragraph; substituted "registered warrants" for "such warrants" near the beginning of the present fourth sentence of the first paragraph; deleted "in the said funds" after "no money" in the present fourth sentence of the first paragraph; deleted from the first paragraph a former next to last sentence reading, "All interest and earnings obtained by the state treasurer for such moneys shall be credited to the respective funds"; substituted "administrative expense" in the last sentence of the first paragraph for "the purposes mentioned above"; deleted "by the state auditor" after "warrants drawn" near the beginning of the second paragraph; and substituted

"the board's account in the agency fund" for "the hail insurance fund" or "the state hail insurance fund" in the second and third paragraphs.

82-1516. (360) **Appointment of appraisers in case of dissatisfaction with official adjustment.** (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within ten (10) days after receiving the adjustment offer of the state board in writing. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars ($10.00) with the request for re-appraisal of the first adjustment. In cases where the board requires the posting of the ten dollar ($10.00) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

(2) If the insured shall be required to pay the expenses of such reappraisement as above provided, the state board of hail insurance is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

Provided, also, that where any claimant demands arbitration he shall, if required by the board, furnish a cash bond to the state board of hail insurance in the sum of twenty-five dollars ($25.00) which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the twenty-five dollars ($25.00) bond, then the state board may use a part or all of said cash bond. In cases where the claimant secures an increase the bond shall be promptly returned to the claimant.

(3) The state board of hail insurance shall examine all reports of appraisers and verify the same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses and conduct examinations and do all things necessary to secure a fair and impartial appraisement of losses by hail.

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 69 and once by Ch. 147. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

Chapter 69, Laws 1963, substituted "ten (10) days after receiving the adjustment offer of the state board in writing" for "four (4) days after such disagreement" at the end of the first sentence of subsection (1); and provided for actions against the board of hail insurance by dividing the former fifth sentence of subsection (1) into two sentences and by inserting at that point the words "may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he."

Chapter 147, Laws 1963, deleted "for the hail insurance fund" after "may retain it" in the third sentence of subsection (1); deleted "out of the hail insurance fund" at the end of subsection (1); and deleted from subsection (2) a former next to last sentence reading, "Any forfeits so collected shall be placed promptly in the state hail insurance administrative fund."

82-1517. (361) **Payment of losses.** (1) The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the losses as follows: From the amount of the loss as adjusted for each claimant the state board of hail insurance shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year, and shall make settlement within forty (40) days from the time loss is sustained in the following manner: By paying, either by registered warrant or otherwise if funds are immediately available, fifty per cent of the total loss as agreed on, less, however, the maximum rate of assessment; balance to be paid at the expiration of the hail season.

(2) The state board of hail insurance shall, on or before November first, order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The state board of hail insurance shall then order payment for the balance of the adjustment which payment shall be sent to the claimant; provided, however, that in no case shall the payment for loss exceed twelve dollars ($12.00) per acre for grain crops on nonirrigated lands, and twenty-four dollars ($24.00) per acre on irrigated lands, and not to exceed twelve dollars ($12.00) per acre on hay crops; provided, further, that no claimant shall receive payment for any loss incurred where said loss does not equal or exceed five per cent (5%) of the total value of the crop insured. Also if the losses in any year should exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved, and the unpaid balance of said losses shall be paid out of the reserve without interest in such order as the state board of hail insurance shall direct, when in the judgment of the said board there are sufficient moneys to provide for the payment of the same and other items payable out of said reserve. In any year the state board of hail insurance may by resolution authorize its chairman and

secretary to borrow as needed from any person, bank or corporation such sum or sums of money as the state board may deem necessary to carry on the business of the department and for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this act, the state board of hail insurance shall cause warrants to be drawn and said warrants shall bear interest at not to exceed six per cent (6%) per annum and said warrants and the interest thereon shall be paid out of funds from the state hail insurance department as they are collected from the various counties in the state. The state board of hail insurance shall not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer.

History: En. Sec. 10, Ch. 169, L. 1917; amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Ch. 141, L. 1921; re-en. Sec. 361, R. C. M. 1921; amd. Sec. 11, Ch. 40, L. 1923; amd. Sec. 2, Ch. 8, L. 1929; amd. Sec. 5, Ch. 33, L. 1949; amd. Sec. 4, Ch. 200, L. 1953; amd. Sec. 77, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "order payment" for "order the state auditor to draw a warrant on the state hail insurance fund" in each of the first two sentences of subsection (2); substituted "which payment" for "which warrant" in each of the first two sentences of subsection (2); substituted "reserve" for "reserve fund" or "funds" in three places in the third sentence of subsection (2); deleted "in said fund" before "sufficient moneys to provide" in the latter part of the third sentence of subsection (2); deleted "against the state hail insurance fund" after "cause warrants to be drawn" in the first sentence of subsection (3); and deleted from subsection (3) a final sentence reading, "The state board of examiners is hereby empowered to invest surplus money belonging to any fund in the warrants of the hail insurance fund."

82-1519. (363) Compensation of chairman and officers—financial report. It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary not in excess of six hundred dollars ($600) per month and all appointed officers and employees under this act shall be allowed the per diem and mileage allowed state employees. The compensation of all appointed officers and employees of the board shall be fixed by the state board of hail insurance.

The chairman of the state board of hail insurance shall each year submit a full financial report of the operations of the department to the governor of the state.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R. C. M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965.

Amendments

The 1961 amendment after the words "receive a salary" in the second sentence inserted the words "not in excess"; increased the monthly salary from $300 to $550; after the words "per month" deleted a phrase which read "while actually engaged in service and actual traveling expenses,"; after the words "appointed officers" in the second sentence inserted "and employees"; at the end of the second sentence, substituted "allowed the per diem and mileage allowed state employees" for "paid their actual traveling expenses and shall be allowed per diem as the state board of hail insurance may determine for each day of eight hours while actually engaged in service under this act, out of the hail insurance administrative fund"; and added the third sentence to the first paragraph.

The 1965 amendment increased the chairman's salary specified in the second sentence from $550 to $600 per month.

Repealing Clause

Section 2 of Ch. 165, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 165, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

Section 2 of Ch. 188, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 16—LABORATORY COMMISSION

(Repealed—Section 33, Chapter 271, Laws of 1963)

82-1601 to 82-1606. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 78, L. 1945), relating to the laboratory commission, were repealed by Sec. 33, Ch. 271, Laws 1963.

CHAPTER 17—LIEUTENANT GOVERNOR

82-1701. (130) Duties of lieutenant governor.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on the third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators, then present and voting, were equally divided. State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

CHAPTER 18—MARSHAL OF SUPREME COURT

82-1803. (368) Repealed.

Repeal

This section (Sec. 4, p. 210, L. 1891; Sec. 1, Ch. 62, L. 1913; Sec. 1, Ch. 52, L. 1919; Sec. 3, Ch. 38, L. 1939; Sec. 1, Ch. 128, L. 1949), relating to the salary and mileage allowances of the marshal, was repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 19—PURCHASING DEPARTMENT AND AGENT

Section 82-1902. Duties of state purchasing agent.
82-1903. Maintenance of warehouses.
82-1904. Authority to purchase.
82-1904.1. Native coal to be preferred for heating of public buildings.
82-1904.2. Use of wood, gas, and oil not prohibited—coal from outside state.
82-1905. Payment for purchases by state agent.
82-1906. Contracts for printing and supplies.
82-1909. Furnishing of stationery, etc., for departments of state.
82-1914. Sale of state property.
82-1916. Printing and publications.
82-1919. Purchase of fresh fruits and vegetables—emergency purchases.
82-1924. State contracts to be awarded to lowest responsible resident bidder.
82-1925. Residence defined—domestic corporations.
82-1926. Contract provision for preference to Montana products—failure to comply—federal aid projects.

82-1901. (284) Creation of state purchasing department and agent.

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1902. (285) Duties of state purchasing agent. The state purchasing agent shall, under the restrictions of this act, have full and sole power

and authority and it shall be his duty to contract for and purchase or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of each and every state department, commission, board, institution, or official. For the purpose of making such purchases and contracts the state purchasing agent shall be and is hereby made the purchasing agent of and for each and every state department, commission, board, institution and official.

History: En. Sec. 2, Ch. 197, L. 1921; re-en. Sec. 285, R. C. M. 1921; amd. Sec. 1, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted the words "upon approval of the state board of examiners" where they appeared between the words "be his duty" and "to contract for" and deleted a proviso at the end of the section which read: "Provided, the state board of examiners may provide a contingent fund for each state department, commission, board, institution, or official, in a sum to be fixed by the state board of examiners, to be used in the payment of urgent contingent expenses that may be necessary for the conduct of the business of such department, commission, board, institution, or official, such expenditures to be thereafter examined and approved by the state board of examiners."

Equipment

Despite the variations in the statutory language, it is apparent that the purchase of equipment such as aircraft was intended to be covered by this act. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1903. (286) **Maintenance of warehouses.** The state purchasing agent shall have the power and authority to maintain warehouses and to rent or lease, or construct the same, and to issue such rules and regulations as may be necessary for the proper and economical conduct of the business of the state purchasing agent.

History: En. Sec. 3, Ch. 197, L. 1921; re-en. Sec. 286, R. C. M. 1921; amd. Sec. 2, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted the words "subject to the approval of the state board of examiners" which appeared after the words "power and authority"; and, at the end of the section, deleted a proviso reading, "provided, such contract and such purchase shall have first met the approval of the state board of examiners before being made."

82-1904. (287) **Authority to purchase.** An estimate or requisition presented by the department, commission, board or state official in control of the appropriation or fund against which such contract or purchase is to be charged, must be approved by the state purchasing agent, and this shall be full authority for any contract and any purchase made by the state purchasing department.

History: En. Sec. 4, Ch. 197, L. 1921; re-en. Sec. 287, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1925; amd. Sec. 1, Ch. 51, L. 1939; amd. Sec. 3, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted at the end of the section a proviso which read: "provided, however, that no purchase shall be made by the state purchasing department of any furniture, fixtures, apparatus or equipment for any department, board, commission or office until the estimate or requisition for the purchase thereof has been submitted to the state board of examiners and an order made by such board authorizing the purchase thereof."

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1904.1. Native coal to be preferred for heating of public buildings. The various state institutions, county buildings and public school houses in the state of Montana, which use coal for heating, shall use Montana native bituminous or lignite coal. No official shall purchase for use in

such institutions, county buildings and public schools any coal other than that produced from the coal mining properties within the boundaries of this state.

History: En. Sec. 1, Ch. 150, L. 1961.

Title of Act

An act to provide that state institutions, county buildings and public school buildings which use coal for heating shall use Montana native bituminous or lignite coal; providing exception in certain instances.

82-1904.2. Use of wood, gas, and oil not prohibited—coal from outside state. This act [82-1904.1, 82-1904.2] shall not be construed, however, as prohibiting the use of wood or its products, gas, oil, or oil products, for fuel, in any area of Montana, where such wood, or its products, gas, oil or oil products, are being used for fuel, in state institutions, county buildings and public school houses, and shall also not prohibit the conversion of a heating system using coal to a heating system using wood, or its products, gas, oil or its products, in the above mentioned institutions, county buildings and public school houses. It shall also not prohibit the use of coal from outside the state of Montana, if the comparative cost of such coal, is not greater than that of the native coal.

History: En. Sec. 2, Ch. 150, L. 1961.

82-1905. (288) Payment for purchases by state agent. All valid claims on account of such contract and purchases negotiated by the state purchasing agent shall be audited and paid from the sums severally set aside for the use of the state purchasing department by the contract and purchase estimate or requisition.

History: En. Sec. 5, Ch. 197, L. 1921; re-en. Sec. 288, R. C. M. 1921; amd. Sec. 4, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section language which read "upon the sworn statement of the executive officer of the department, commission, board, or institution, or the state official in control of the appropriation or fund, together with the sworn statements of the state purchasing department, and said sworn statements of said executive officer and state purchasing department, after approval by the state board of examiners shall be full and sufficient authority for the state auditor to draw his warrant and the treasurer to pay the same against any appropriation or fund in the treasury available for the purpose of any such contract and purchase."

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1906. (289) Contracts for printing and supplies. The state purchasing agent shall have exclusive power to contract for all printing and to purchase, sell, or otherwise dispose of, or to authorize, regulate and control the purchase, sale or other disposition of, all materials and supplies, service, equipment, and other physical property of every kind, required by any state institution or by any department of the state government; and to purchase or cause to be purchased all needed commissary supplies, and all raw material and tools necessary for any manufacturing carried on at any of said institutions; and to sell all manufactured articles, and collect the money for the same, and generally to regulate and control all purchases by any department of the state government, or by any state institution; and also to furnish, repair, and maintain the executive residence for the governor. The state purchasing agent shall remit to the state treasurer all moneys received from the sale of

property belonging to the state of Montana, said moneys to be by the treasurer credited to the general fund.

History: En. Sec. 6, Ch. 197, L. 1921; re-en. Sec. 289, R. C. M. 1921; amd. Sec. 5, Ch. 80, L. 1961.

Amendment

The 1961 amendment after the words "have exclusive power" deleted the words "subject to the consent and approval of the state board of examiners."

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1907. (290) **Repealed.**

Repeal

This section (Sec. 7, Ch. 197, L. 1921), relating to the compensation and bonds of employees of the state purchasing department, was repealed by Sec. 21, Ch. 177, Laws 1965.

82-1909. (292) **Furnishing of stationery, etc., for departments of state.** All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, and the printing, binding and distribution of the laws, journals and department reports and other printing and binding, and repairing and furnishing the halls and rooms used for the meeting of the legislative assembly and its committees, shall be procured by the state purchasing agent as hereinafter provided.

History: En. Sec. 9, Ch. 197, L. 1921; re-en. Sec. 292, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1949; amd. Sec. 6, Ch. 80, L. 1961.

Amendment

The 1961 amendment at the end of the section, deleted the words "with the approval of the state board of examiners."

82-1911. (293.1) **Property returns.**

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1912. (293.2) **Inventory—property to be charged, etc.**

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1913. (293.3) **Advertising for bids required, etc.**

Lease of Equipment

A five-year lease of an airplane with an option to purchase during the term of the lease or for a nominal amount on expiration of the lease was, for the purposes of this act, a "purchase" in view of the amount involved and the purchase provisions. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1914. (293.4) **Sale of state property.** The state controller shall have exclusive power, subject to the consent and approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of the state government.

History: En. Sec. 4, Ch. 66, L. 1923; amd. Sec. 74, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "The state controller" for "The state purchasing agent" at the beginning of the section; and deleted from the end of the section clauses and sentences reading, "and to sell all articles, produce or crops produced, manufactured, made or grown in any state institution and to collect the money for same, except such portion of such articles, produce or crops as may be used or consumed in such institution; each state institution shall keep and submit to

the state purchasing agent, at least once each year or oftener if demanded, a list of such articles, produce or crops used or consumed therein and if any part thereof has theretofore been inventoried, as in this act hereinbefore provided, then such institution shall be given credit therefor. The state purchasing agent shall remit to the state treasurer all moneys received from the sale of property belonging to the state of Montana, said moneys to be by the treasurer credited to the general fund. True and correct lists of all articles, produce and crops sold with the names of the purchasers, their addresses and sums received therefor, shall be prepared and kept on file in the office of the state purchasing agent, which list shall at all times be subject to inspection by the public."

82-1915. (293.5) **Contracts for supplies of state agencies.**

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1916. (293.6) **Printing and publications.** The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to contract for all printing for any purpose used by the state of Montana in any state office, elective or appointive or by any state board, commission, bureau, state institution or department except the printing of the decisions of the supreme court as provided in section 82-2004, Revised Codes of Montana, 1947, and shall supervise and attend to all public printing of the state of Montana in the manner in this act provided, and shall prevent duplication and unnecessary printing; all forms, blanks and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his office; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description and official numbers of such reports as are available for public distribution.

Unless otherwise provided by law, the state purchasing agent in letting contracts as provided in this act, for the printing, binding and publishing of all laws, journals and reports of the various offices, departments, boards, commissions and institutions of the state, shall have the power to determine the quantity, quality, style and grade of all such printing, binding and publishing.

Provided, that all reports of any department or institution of the executive branch for any fiscal year required by law to be published, must be submitted to the governor before November 1st, of each year, for approval, correction or modification, and when by the governor approved, as corrected or modified, must by him be certified to the state purchasing agent for publication, provided, the governor may require all such reports or any number of them, to be published in one volume, such publication to be completed on or before the tenth day of January thereafter. Such reports shall be confined to a factual presentation to the governor and legislature of the activities of the department concerned and any recommendations of the department head and shall be 8½ x 11 inches in outside dimension and shall employ single color covers only.

And provided further, any such reports so published, in one volume may also be separately published in pamphlet form, in such number as may be directed by the governor.

The reports shall be distributed by the department responsible for making the report. Such distribution shall be within the discretion of the head of the department making the report, but the following distribution shall be mandatory:

To the governor—as many as he desires, but not less than two (2) copies of each report.

To the secretary of state—two (2) copies of each report.

To the legislative council—two (2) copies of each report.

To the librarian of the state historical library—forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports.

The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to such libraries and other institutions outside this state with which the historical society of Montana may have established exchange relations.

The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study.

To the legislative assembly of the state of Montana—one (1) copy for each member.

History: En. Sec. 6, Ch. 66, L. 1923; amd. Sec. 7, Ch. 80, L. 1961.

Amendment

The 1961 amendment inserted the words "except the printing of the decisions of the supreme court as provided in section 82-2004 Revised Codes of Montana, 1947" in the first paragraph; divided the former second paragraph into the second and third paragraphs; inserted the words "of any department or institution of the executive branch" near the beginning of the present third paragraph; added the last sentence to the present third paragraph; and added at the end of the section the paragraphs pertaining to the distribution of reports, beginning with the words "The reports shall be distributed."

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1917. (293.7) **Requisitions for supplies—manner of letting contracts.**

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1919. (293.9) **Purchase of fresh fruits and vegetables—emergency purchases.** Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as hereinbefore provided. The state purchasing agent may allow any state officer, board, commission or superintendent of state institution to purchase the fresh fruits and vegetables therefor, and make other and minor purchases for the same; an itemized account to be kept of all such purchases and furnished to the state purchasing department.

Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which such articles are usually bought and sold or such services

engaged between individuals, but under the direction of the state purchasing agent.

History: En. Sec. 9, Ch. 66, L. 1923; amd. Sec. 8, Ch. 80, L. 1961.

Amendment

The 1961 amendment, in the second sentence of the first paragraph, after the words "agent may allow" deleted the words "under proper rules, regulations and instructions approved by the state board of examiners"; and at the end of the section deleted the words "and subject to the approval of the state board of examiners."

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1920. (293.10) **Impartiality to be shown in letting contracts, etc.**

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1921. (293.11) **Record of bids—contracts.**

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1922. (293.12) **Transfer of contract forbidden, etc.**

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

82-1924. State contracts to be awarded to lowest responsible resident bidder. In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair and public works of all kinds, it shall be the duty of each board, commission, officer or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district or public corporation of the state of Montana, to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than two per cent (2%) higher than that of the lowest responsible bidder who is a nonresident of this state. This requirement shall prevail whether the law required advertisement for bids or does not require advertisement for bids.

History: En. Sec. 1, Ch. 183, L. 1961.

Title of Act

An act to create regulations for the awarding of contracts by the state of Montana, agencies thereof, political subdivisions thereof, school districts and other public corporations; providing for preference for Montana residents and for products manufactured and produced in this state; defining the word "resident"; providing penalties and repealing all acts and parts of acts in conflict herewith; containing a severability clause and an effective date.

82-1925. Residence defined—domestic corporations. For the purpose of this act the word "resident" shall include actual residence of an individual within this state for a period of more than one (1) year immediately prior to bidding; in a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than one (1) year immediately prior to bidding; domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents but this

qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer or individual charged with the responsibility for the execution of such contract that said corporation is (a) composed of resident organizers or directors of this state who have no substantial interest or investment in the corporation for which they are acting and that the ownership and control of said company is vested in nonresidents; (b) that the Montana corporation is a wholly-owned subsidiary of a foreign corporation; (c) that said corporation was formed for the purpose of circumventing the provisions of this act relating to residence.

History: En. Sec. 2, Ch. 183, L. 1961.

82-1926. **Contract provision for preference to Montana products—failure to comply—federal aid projects.** Each contract awarded by any political subdivision, school district, public corporation or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies and equipment, if such products, materials, equipment and supplies are comparable in price and quality. Further, in this connection, it is the intent of this act that wherever possible products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in price, quality and performance, shall be preferred for use in all projects and in all state institutions.

Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation or agency for a period of two (2) years.

No preference shall be given on contracts where federal aid is obtained from any bureau or department of the United States except as provided for by the laws of the United States, nor shall the provisions of section 82-1157, Revised Codes of Montana, 1947, be amended or repealed by this act.

History: En. Sec. 3, Ch. 183, L. 1961.

Separability Clause

Section 4 of Ch. 183, Laws 1961 read "If any section, subsection, sentence, phrase or clause of this act is for any reason held to be unconstitutional or invalid, such declaration shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 5 of Ch. 183, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 183, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

CHAPTER 20—REPORTERS OF DECISIONS OF SUPREME COURT—PUBLICATION AND DISTRIBUTION OF REPORTS

Section 82-2002. Duties of reporters.
82-2004. Contract with publisher.

82-2002. (379) **Duties of reporters.** The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases

decided by the supreme court. The reports of such cases shall be made under the supervision of, and pursuant to rules and regulations promulgated by the justices of the supreme court.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961.

Amendment

The 1961 amendment substituted the second sentence for sentences reading: "The reports of such cases shall contain syllabi of the points decided; a statement of the facts taken from the record, when the same are not fully given in the opinion of the court; the names of counsel; and a reference to such authorities as are cited in the briefs of counsel and have special bearing on the case. It shall be the further duty of said reporters to prepare a full and comprehensive index and tables of cases reported to each volume of said reports."

82-2004. (381) **Contract with publisher.** The justices shall have no pecuniary interest in the volumes of reports. The reports must be published by contract to be entered into by the justices and with the publishing house that will agree to publish the new volumes of the Montana reports for any term of years agreeable to the justices, provided that such term shall not exceed six (6) years, nor be for less than one (1) year, and furnish to the state and the people of the state at prices fixed in the contract any volume or volumes printed by such publishers. In the contract the justices may, at their discretion, require the publisher to agree to furnish complete sets or odd volumes of the Montana reports from and including volume one to the last volume published, to the state and the people of the state at prices fixed in the contract. Such contract shall require the publisher to print each volume in accordance with the specifications set forth in the preceding section. It shall also require the publisher to issue each new volume within ninety (90) days after the manuscript for the same is delivered by the justices to the said publisher. Such contract shall also require the publisher to make stereotype matrices of each volume so published by him, and to preserve these matrices in fire proof vaults, to the end that the volumes will never become out of print. The publisher receiving the contract as herein provided shall, before commencing the publication of the volumes of such reports, advertise in two (2) newspapers in Montana for ten (10) days for proposals for such printing, stereotyping, and binding of such volumes, and such publisher shall, if the proposals for such work do not exceed by the sum of twenty per cent (20%), the amount for which the same can be done outside of the state, cause such printing, stereotyping and binding to be done within the state of Montana.

History: En. Sec. 893, Pol. C. 1895; re-en. Sec. 309, Rev. C. 1907; re-en. Sec. 381, R. C. M. 1921; amd. Sec. 2, Ch. 1, L. 1925; amd. Sec. 1, Ch. 111, L. 1943; amd. Sec. 2, Ch. 14, L. 1961.

Amendment

The 1961 amendment in the second sentence, substituted the words "for any term of years agreeable to the justices, provided that such term shall not exceed six (6) years, nor be for less than one (1) year," for the words "for a period of six (6) years."

CHAPTER 21—INTERGOVERNMENTAL COOPERATION

Section 82-2112. Legislative council—function—commission on interstate cooperation—delegations and committees.
82-2113. Council of state governments declared joint governmental agency.

82-2101 to 82-2111. Repealed.

Repeal

These sections (Secs. 1 to 11, Ch. 86, L. 1937), relating to committees on intergovernmental cooperation, were repealed by Sec. 1, Ch. 72, Laws 1959.

82-2112. Legislative council—function—commission on interstate cooperation—delegations and committees. It shall be a function of the legislative council to:

(1) Carry forward the participation of the state of Montana as a member of the council of state governments, and the legislative council is hereby designated as the Montana commission on interstate cooperation;

(2) Encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with the other states, with the federal government, and with local units of government;

(3) Establish such delegations and committees as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Members of such delegations and committees shall serve without pay, but they may be reimbursed for expenses as provided by law;

(4) Endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation, and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process.

History: En. Sec. 2, Ch. 72, L. 1959.

Title of Act

An act to repeal sections 82-2101, 82-2102, 82-2103, 82-2104, 82-2105, 82-2106, 82-2107, 82-2108, 82-2109, 82-2110, and 82-2111 of the Revised Codes of Montana, 1947, relating to the establishment of the Montana commission on intergovernmental cooperation, its duties, functions, membership, reports and compensation; to provide the legislative council shall be a member of the commission on interstate cooperation; to provide that the state of Montana shall be a member of the council of state governments; to provide that the council of state governments is to be a joint governmental agency of the state of Montana and of other states which cooperate through it; to provide that the legislative council shall establish such delegations and committees as may be advisable, providing that members of said delegations and committees shall serve without pay, but may be reimbursed for expenses as provided by law; and providing a repealing clause.

Repealing Clause

Section 1 of Ch. 72, Laws 1959 read "Sections 82-2101, 82-2102, 82-2103, 82-2104, 82-2105, 82-2106, 82-2107, 82-2108, 82-2109, 82-2110, and 82-2111 of the Revised Codes of Montana, 1947, be, and the same are hereby repealed."

82-2113. Council of state governments declared joint governmental agency. In order to facilitate such cooperation, the council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History: En. Sec. 3, Ch. 72, L. 1959.

Repealing Clause

Section 4 of Ch. 72, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 22—SECRETARY OF STATE

Section 82-2202. Duties of secretary of state.
82-2212. Expenses incurred, how paid.

82-2202. (134) **Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1 to 13. * * * [Same as parent volume.]

14. To discharge the duties of member of the state board of examiners, of member of the state board of prison commissioners, of member of the state board of land commissioners and all other duties required of him by law.

15 to 17. * * * [Same as parent volume.]

History: En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 134, R. C. M. 1921; amd. Sec. 95, Ch. 199, L. 1965. Cal. Pol. C. Sec. 408.

Amendment

The 1965 amendment deleted "of member of the state board of pardons" and "of member of state board of commissioners of insane, deaf, dumb, and blind, and state sealer of weights and measures" from subsection 14.

82-2205. (137) **Repealed.**

Repeal

This section (Sec. 405, Pol. C. 1895), relating to the duty of the secretary of state to receive and keep supplies, was repealed by Sec. 14, Ch. 80, Laws 1961.

82-2212. (144) **Expenses incurred, how paid.** The expenses incurred by the secretary of state in carrying into effect the provisions of sections 82-2202 to 82-2204 inclusive must be paid out of any moneys specially appropriated for the purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R. C. M. 1921; amd. Sec. 30, Ch. 97, L. 1961.

Amendment

The 1961 amendment changed "82-2205" to "82-2204" and after the words "must be" deleted the words "audited by the board of examiners, and."

82-2213. (148) **Repealed.**

Repeal

This section (Sec. 412, Pol. C. 1895), relating to the bond of the secretary of state, was repealed by Sec. 51, Ch. 177, Laws 1965.

CHAPTER 28—COUNCIL FOR WELFARE AND HEALTH

(Repealed—Section 101, Chapter 199, Laws of 1965)

82-2801 to 82-2803. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 86, L. 1953), relating to the advisory council for welfare, health, and institutions, were repealed by Sec. 101, Ch. 199, Laws 1965. Section 102, Ch. 199, Laws 1965, abolished the council and provided for transfer of its property and records to the state department of institutions.

CHAPTER 30—NATURAL RESOURCES AND DEVELOPMENT COUNCIL

Section 82-3001. Creation of inter-departmental advisory council.

82-3001. Creation of inter-departmental advisory council. There is hereby created an inter-departmental advisory council, to be known as the council on natural resources and development (hereinafter referred to as the "council"). It shall be composed of the following: The commissioner of state lands and investments, state game warden, state forester, secretary of the grass conservation commission, a person designated by the state water conservation board, executive secretary of the oil conservation board, director of the state bureau of mines and geology, and state highway engineer.

History: En. Sec. 1, Ch. 95, L. 1953; amd. Sec. 4, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "a person designated by the state water conservation board" for "state engineer" in the second sentence.

CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY

Section 82-3102. Authority and duties of the state agency for surplus property.
82-3104. Authorization for financing.
82-3105. Superintendent of public instruction—delegating powers and duties.
82-3106. Officers or employees authorized to secure transfer of surplus property.

82-3102. Authority and duties of the state agency for surplus property. (a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act," such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes of education, public health or civil defense, including research for any such purpose, and for such other purposes as may now or hereafter be authorized by federal law; (2) to warehouse such property; and (3) to distribute such property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code of 1954 within the state, to civil defense organizations of the state, or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institutions or activities as may now be or hereafter become eligible under federal law to acquire such property.

(b) The state agency for surplus property is hereby authorized to receive applications from eligible institutions for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate health or educational authorities of the state, make recommendations regarding the need of such

applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act.

(c) For the purpose of executing its authority under this act, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other action as is deemed necessary and suitable, in the administration of this act, to assure maximum utilization by and benefit to health, educational and civil defense institutions and organizations within the state from property distributed under this act.

(d) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as clearing house of information for the public and private nonprofit institutions, organizations and agencies referred to in subparagraph (a) of this section and other institutions eligible to acquire federal surplus real property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions, organizations and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations and agencies in every way possible in the consummation of acquisitions or transactions hereunder.

(f) The state agency for surplus property, in the administration of this act, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, and make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the state.

History: En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957.

Amendment

The 1957 amendment completely revised this section. For section prior to amendment see parent volume.

82-3103. Repealed.

Repeal

This section (Sec. 3, Ch. 136, L. 1953), relating to cooperation with federal departments and agencies, was repealed by Sec. 4, Ch. 166, Laws 1957, effective March 7, 1957.

82-3104. Authorization for financing. The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property which shall be deposited in the treasury in the federal and private grant clearance fund. At any time the state board of education deems that sufficient surplus has accumulated in the surplus property account, over and above the necessary funds for proper expenditures and reasonable reserve, a rebate shall be made to all institutions as listed in section 82-3102 (a) which have participated in surplus property purchases during the particular period in which this surplus has accumulated. This rebate shall be determined on a ratio of business transacted by each such institution to the total business transacted by the state agency during the time involved.

History: En. Sec. 4, Ch. 136, L. 1953; amd. Sec. 66, Ch. 147, L. 1963.

Amendment

The 1963 amendment added "which shall be deposited in the treasury in the federal and private grant clearance fund" at the end of the first sentence.

82-3105. Superintendent of public instruction—delegating powers and duties. The state superintendent of public instruction may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this act.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957; amd. Sec. 49, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a second paragraph reading, "The state superintendent of public instruction may in his discretion bond any person in the employ of the state agency for surplus property handling moneys, signing checks, or receiving or distributing property from the United States under authority of this act."

82-3106. Officers or employees authorized to secure transfer of surplus property. Any provision of law to the contrary notwithstanding, the governing board, or in case there be none, the executive head, of any state department, instrumentality, or agency or of any city, county, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this act through the state department of public instruction, donable property division under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written

notice of such revocation shall have been received by state department of public instruction, donable property division.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957.

Repealing Clause

Section 4 of Ch. 166, Laws 1957 read "Section 82-3103, Revised Codes of Montana, 1947, and all acts or parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 5 of Ch. 166, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

CHAPTER 32—STATE RECORDS

Section 82-3205. Microfilm division—creation.

82-3201 to 82-3204. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 189, L. 1953), relating to the destruction of state records, were repealed by Sec. 33, Ch. 271, Laws 1963.

82-3205. Microfilm division—creation. The director of the historical society shall establish in his department a division to be known as the microfilm division for the preservation by photographic methods of state records required or permitted by law to be preserved, and may employ such personnel as may be necessary for the proper and efficient operation of the division. Provided, however, that it shall be the duty of the department, commission or agency which records are to be preserved to prepare said records as the librarian shall direct.

History: En. Sec. 5, Ch. 189, L. 1953; amd. Sec. 31, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "The director of the historical society" for "The librarian" at the beginning of the section.

Separability Clause

Section 32 of Ch. 271, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 33 of Ch. 271, Laws 1963 read "Sections 78-101 through 78-109, 78-201, 78-203 through 78-208, 78-210, 78-211, 78-301, 78-303 through 78-308, 78-401 through 78-416, 78-601 through 78-620, 78-701 through 78-736, 78-801 through 78-818, 78-901 through 78-909, 82-1125, 82-1132, 82-1134, 82-1601 through 82-1606, and 82-3201 through 82-3204, R. C. M. 1947, are repealed."

CHAPTER 33—DEPARTMENT OF ADMINISTRATION

Section 82-3301. Title and purpose of act.
82-3302. Department of administration—controller is chief executive officer.
82-3303. Divisions within department.
82-3304. Duties of controller.
82-3305. Adoption of regulations—biennial reports.
82-3306. Supervision of mailing facilities.
82-3307. Supervision of central telephone switchboard.
82-3308. Surveys and allocation of office space.
82-3309. Custodial care of capitol buildings and grounds.
82-3310. Controller—custodian of state property.
82-3311. Records management program.
82-3312. Definition of records.
82-3313. Destruction of records.

82-3314. Definitions of building and construction.
82-3315. Preparation of building programs and submittal to the legislative assembly.
82-3316. Authority to construct buildings.
82-3317. Supervision of construction of buildings.
82-3318. General powers and duties of controller.
82-3319. Appointment of architects and consulting engineers.
82-3320. Policy regarding practice of architecture—preparation of working drawings by department limited.
82-3321. Pecuniary interest in construction of buildings prohibited.
82-3322. State agencies abolished.

82-3301. Title and purpose of act. This act may be cited as "The Department of Administration Act." It is the purpose of this act to create a more coordinated, responsible, efficient and economical organization by centralizing and consolidating the general administrative and fiscal functions of state government into one department.

History: En. Sec. 1, Ch. 271, L. 1963.

Title of Act

"The Department of Administration Act" creating a department of administration with duties and powers in the areas of accounting, purchasing, planning and construction of state buildings, records management, maintenance and custody of capitol buildings, and general services; abolishing the state records committee, the state laboratory commission, the veterans' memorial fund commission, the state furnishing board, and the office of capitol custodian; amending sections 26-103, 75-310, 77-417, 77-419, 78-202, 78-302, 82-109.2, 82-308 and 82-3205, R. C. M. 1947; repealing sections 78-101 through 78-109, 78-201, 78-203 through 78-208, 78-210, 78-211, 78-301, 78-303 through 78-308, 78-401 through 78-416, 78-601 through 78-620, 78-701 through 78-736, 78-801 through 78-818, 78-901 through 78-909, 82-1125, 82-1132, 82-1134, 82-1601 through 82-1606, and 82-3201 through 82-3204, R. C. M. 1947.

82-3302. Department of administration—controller is chief executive officer. There is in the state government a department of administration, hereafter referred to as "department." The state controller, ex officio state purchasing agent, hereafter referred to as "controller," is the chief executive officer of the department.

History: En. Sec. 2, Ch. 271, L. 1963.

82-3303. Divisions within department. The department shall consist of the following divisions:

(1) Accounting
(2) Purchasing
(3) Architecture and engineering
(4) General services

Each division shall be administered by a division head who shall be appointed by, and serve at the pleasure of the controller.

History: En. Sec. 3, Ch. 271, L. 1963.

82-3304. Duties of controller. The controller, in addition to performing the duties assigned by this act, shall continue to perform the duties that are assigned to him elsewhere by law and shall allocate all of these duties among the divisions of the department. The controller shall allocate duties that relate to the handling of public moneys and other fiscal duties in such a manner to insure sound internal fiscal control within the department.

History: En. Sec. 4, Ch. 271, L. 1963.

82-3305. Adoption of regulations—biennial reports. The controller shall adopt and amend regulations, not inconsistent with the laws of the state, necessary for the effective administration of the department. The controller shall report biennially to the governor and the legislature.

History: En. Sec. 5, Ch. 271, L. 1963.

82-3306. Supervision of mailing facilities. The controller shall maintain and supervise any central mailing facilities for state agencies in the capitol area.

History: En. Sec. 6, Ch. 271, L. 1963.

82-3307. Supervision of central telephone switchboard. The controller shall maintain and supervise any central telephone switchboard for state agencies located in Helena.

History: En. Sec. 7, Ch. 271, L. 1963.

82-3308. Surveys and allocation of office space. The controller shall periodically survey the needs of state agencies located in Helena and shall assign space in state office buildings to such agencies. No state agency shall lease, rent or purchase property for quarters in Helena without prior approval of the state controller.

History: En. Sec. 8, Ch. 271, L. 1963.

82-3309. Custodial care of capitol buildings and grounds. (1) It is the duty of the state controller to supervise and direct the work of caring for and maintaining buildings, equipment and grounds in the capitol area. The controller shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings, equipment and grounds in the capitol area.

(2) No state agency may alter, improve, repair or remodel a state building in the capitol area without the approval of the controller.

History: En. Sec. 9, Ch. 271, L. 1963.

82-3310. Controller—custodian of state property. The state controller is custodian of all state property in the state capitol area.

History: En. Sec. 10, Ch. 271, L. 1963.

82-3311. Records management program. The controller shall establish and administer a records management program for the efficient creation, utilization, maintenance, retention, preservation and disposal of state records and shall periodically survey current records management practices including the use of space, equipment, supplies, and personnel employed in creating, maintaining, and storing records.

History: En. Sec. 11, Ch. 271, L. 1963.

82-3312. Definition of records. As used in this act the word "records" includes any paper, book, photograph, motion picture film, microfilm, sound recording, map, drawing or other document that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction. Library and museum material made or acquired and preserved

solely for reference or exhibition purposes, and extra copies of documents or publications are not included within the definition of the word "records."

History: En. Sec. 12, Ch. 271, L. 1963.

82-3313. Destruction of records. No records shall be destroyed without the permission of the controller. An agency desiring permission to destroy records shall submit a triplicate list of the records to the controller, showing in writing the nature and quantity of the records and the reasons why they should be destroyed. The controller shall send a copy of the list to the attorney general and the director of the historical society, each of whom shall, within thirty (30) days, return the list together with a statement of any reasons why the records should not be destroyed. If neither the director of the historical society nor the attorney general object, the controller may grant permission to destroy the records.

History: En. Sec. 13, Ch. 271, L. 1963.

82-3314. Definitions of building and construction. In sections 15 through 21 [82-3315 to 82-3321] of this act

(1) "Building" includes:

(a) A building, facility or structure constructed or purchased wholly or in part with state moneys.

(b) A building, facility or structure at a state institution.

(c) A building, facility or structure owned or to be owned by a state agency, including the state highway commission.

(2) "Building" does not include:

(a) A building, facility or structure owned or to be owned by a county, city, town, school district, or special improvement district.

(b) A facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: En. Sec. 14, Ch. 271, L. 1963.

82-3315. Preparation of building programs and submittal to the legislative assembly. (1) Before July 1 of each even numbered year, each agency and institution of state government shall submit to the controller, on forms furnished by the controller, a proposed long range building program, if any, for the agency or institution. Each agency and institution shall furnish to the controller any additional information requested by him relating to the utilization of, or need for buildings.

(2) The controller shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary, and conduct whatever surveys are necessary, in order to provide a factual basis for determining the need for, and the feasibility of the construction of buildings. The information compiled by the controller shall be submitted to the governor before December 1 of each even numbered year.

(3) During the first week of each regular legislative session, the governor shall submit to the legislative assembly:

(a) The requests of all state agencies and institutions compiled in the form of a comprehensive, long range proposed building program, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building, including necessary land acquisition.

(iii) The reasons given by the institution or agency for needing each building.

(iv) A priority order recommended by the agency or institution for each building.

(v) The recommendation of the institution or agency as to when each building is needed.

(vi) Any comments of the governor.

(b) A building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building and necessary land acquisition.

(iii) The reasons for the governor's recommendation to construct each building during the forthcoming biennium.

(iv) The proposed method of financing for each building.

(v) Any long-range building plans.

(vi) Any changes in the law necessary to insure an effective, well-coordinated building program for the state.

History: En. Sec. 15, Ch. 271, L. 1963.

82-3316. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars ($25,000.00) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars ($25,000.00) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent shall be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the university of Montana may authorize the construction of residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; and student union buildings and facilities.

(c) The regents of the university of Montana, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of such a building will not result in any new programs.

History: En. Sec. 16, Ch. 271, L. 1963.

82-3317. Supervision of construction of buildings. (1) For the construction of a building costing more than ten thousand dollars ($10,000.00) the state controller shall:

(a) Review and approve all plans and working drawings prepared by architects.

(b) Approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys.

(c) Under the supervision and with the approval of the board of examiners, solicit, accept and reject bids and award all contracts to the lowest qualified bidder.

(d) Review and, with the consent of the board of examiners, approve all change orders.

(e) Accept the building when completed according to approved plans and specifications.

(2) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section.

History: En. Sec. 17, Ch. 271, L. 1963.

82-3318. General powers and duties of controller. In carrying out his powers relating to the construction of buildings the controller may:

(1) Inspect buildings not under construction.

(2) Contract with the federal government for advance planning funds.

(3) Purchase, lease and acquire by exchange or otherwise, land and buildings in Lewis and Clark county and equipment and furnishings for such buildings.

(4) Issue and sell bonds and other securities.

(5) Maintain an inventory of all buildings.

(6) Appoint a three member advisory council consisting of one licensed architect, one licensed general building contractor and one consulting engineer to advise and assist him on matters involving their respective professions. Said advisory council, in conjunction with the controller, shall establish minimum standards and test requirements on materials used in public buildings, works or improvements of the state of Montana, or any agency thereof, and shall maintain a file of resident duly licensed and/or registered architects and engineers showing professional qualifications for employment on public buildings, works or improvements of the state of Montana or any agency thereof. The council shall meet quarterly in Helena, Montana, at the office of the state controller and at such other times as construction progress requires. The members of said council shall receive twenty-five dollars ($25) per diem and shall be reimbursed eight cents (8¢) per mile for travel expenses.

(7) Appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans and specifications. The cost of such supervision may be charged against moneys available for construction.

History: En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965.

Amendment

The 1965 amendment substituted "a three member advisory council consisting of one licensed architect, one licensed general building contractor and one consulting engineer" for "an advisory council of licensed architects and consulting engi-

neers" after "appoint" at the beginning of paragraph (6); and added the last three sentences to paragraph (6).

Repealing Clause

Section 2 of Ch. 203, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 203, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

82-3319. Appointment of architects and consulting engineers. The state controller shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled or renovated by the state of Montana, its boards, institutions and agencies. Such appointment shall be subject to the approval of the state board of examiners.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965.

Amendment

The 1965 amendment substituted "The state controller" at the beginning of the section for "The administrative head of the institution or agency for which a building is constructed"; substituted "any building to be constructed, remodeled or renovated by the state of Montana, its boards, institutions and agencies" for "the building"; and substituted the second sentence for a final clause reading, "subject to approval by the state controller and the state board of examiners."

Repealing Clause

Section 2 of Ch. 231, Laws 1965 repealed all acts and parts of acts in conflict therewith.

82-3320. Policy regarding practice of architecture—preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from

(a) Engaging in pre-planning functions necessary to prepare a building program for presentation to the legislative assembly,

(b) Supervising construction as provided in section 18, subsection (7) [82-3318 (7)] of this act, or

(c) Preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, when the total cost of the construction will exceed ten thousand dollars ($10,000.00).

History: En. Sec. 20, Ch. 271, L. 1963.

82-3321. Pecuniary interest in construction of buildings prohibited. Neither the controller nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract, transaction or project involving the construction of a building.

History: En. Sec. 21, Ch. 271, L. 1963.

82-3322. State agencies abolished. The state records committee, the state laboratory commission, the veterans' memorial fund commission, the state furnishing board, and the office of capitol custodian are abolished. All records, property and moneys of these agencies are transferred to the department of administration.

History: En. Sec. 22, Ch. 271, L. 1963.

CHAPTER 34—OPEN MEETINGS OF PUBLIC AGENCIES

Section 82-3401. Legislative intent—liberal construction.
82-3402. Meetings of public agencies to be open to public—exceptions.
82-3403. Minutes of meetings—public inspection.

82-3401. Legislative intent—liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this act that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the act shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963.

Title of Act

An act to provide that all meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public and providing exceptions.

82-3402. Meetings of public agencies to be open to public—exceptions. All meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organization or agencies supported in whole or in part by public funds, or expending public funds, at which any action is taken by such public governmental body, board, bureau, commission or agency of the state or any political subdivision of the state shall be open to the public, except as otherwise specifically provided by law and except any meeting involving or affecting;

(1) National or state security.

(2) The disciplining of any public officer or employee, or any hearing on, or of, a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.

(3) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.

(4) The purchasing of public property, the investing of public funds or other matters involving competition or bargaining which, if made public may adversely affect the public security or financial interest of the state or any political subdivision or agency of the state.

(5) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.

(6) Law enforcement, crime prevention, probation or parole.

History: En. Sec. 2, Ch. 159, L. 1963.

82-3403. Minutes of meetings—public inspection. Appropriate minutes of all meetings declared to be open, shall be kept and shall be available for inspection by the public.

History: En. Sec. 3, Ch. 159, L. 1963.

CHAPTER 35—COMMITTEE ON PROBLEMS OF AGING

Section 82-3501. Committee created.
82-3502. Composition of committee—appointment and terms of members.
82-3503. Quorum of committee—officers—meetings.
82-3504. Functions of committee.
82-3505. Grants and gifts to committee—deposit and availability.
82-3506. Report to governor and legislative assembly.

82-3501. Committee created. There is hereby created the committee on problems of aging, hereafter called "the Committee."

History: En. Sec. 1, Ch. 73, L. 1965. **Title of Act**

An act to create a committee on problems of aging.

82-3502. Composition of committee—appointment and terms of members. The committee shall consist of fifteen (15) members appointed by the governor as follows: One (1) member each from the following offices: state board of health, department of public institutions, Montana medical association, public employees retirement system, department of public welfare, Montana nurses association, Montana nursing home association, the legislative assembly. Seven (7) citizen members shall be selected on the basis of active interest, experience and ability, none of whom shall be employees of the state. Five (5) committee members shall be appointed initially for terms of one (1) year; five (5) shall be appointed initially for terms of two (2) years, five (5) shall be appointed initially for terms of three (3) years. An appointment to replace a member whose term has expired shall be for three (3) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 2, Ch. 73, L. 1965.

82-3503. Quorum of committee—officers—meetings. A majority of the members of the committee shall constitute a quorum for the transaction of business. The committee shall elect a chairman, a vice-chairman, a secretary and such other officers as it deems necessary. The committee shall meet on call of the chairman of the committee or the governor.

History: En. Sec. 3, Ch. 73, L. 1965.

82-3504. Functions of committee. The committee shall: 1. Consult with and advise organized efforts by communities, organizations, associations and groups that are working toward any and all forms of assistance to problems of aging.

2. Study and identify problems of aging.

3. Review existing programs for the aging and make recommendations to the governor and the legislature for improvements in such programs.

4. Encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons.

History: En. Sec. 4, Ch. 73, L. 1965.

82-3505. Grants and gifts to committee—deposit and availability. The committee may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the same so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall

be deposited with the state treasurer and shall be continuously available to the committee.

History: En. Sec. 5, Ch. 73, L. 1965.

82-3506. Report to governor and legislative assembly. The committee shall report to the governor and legislative assembly prior to the end of each even numbered year.

History: En. Sec. 6, Ch. 73, L. 1965.

Effective Date

Section 7 of Ch. 73, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

Chapter 1. Sovereignty and territorial jurisdiction of the state, 83-104.1, 83-113.
5. Acceptance of amendments to enabling act, 83-503.
7. Tort actions against state, 83-701 to 83-707.
8. Jurisdiction of Indian country, 83-801 to 83-806.

CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

Section 83-104.1. Reassumption of jurisdiction over Blackfeet highway.
83-113. Consent to migratory bird reservations—jurisdiction.

83-104.1. Reassumption of jurisdiction over Blackfeet highway. That the provisions of the act of Congress of March 15, 1958, P.L. 85-343, 85th Congress, S.1828, 72 Stat. 35-36, to retrocede to the state of Montana such concurrent police jurisdiction as has been ceded to the United States of America over the rights-of-way of the Blackfeet highway, including the highway itself, and over the rights-of-way of its connection with the Glacier National Park road system on the Blackfeet Indian reservation, including the highways themselves, are hereby accepted by the state of Montana as required by section 2 of said act of March 15, 1958 (72 Stat. 35-36) with the understanding on the part of the state of Montana that the laws and regulations of the United States of America pertaining to Glacier National Park shall cease to apply to the territory of said rights-of-way and highways as in said act of the Congress made and provided.

History: En. Sec. 1, Ch. 157, L. 1963.

Title of Act

An act to accept the retrocession by the United States of America of concurrent police jurisdiction over the rights-of-way of the Blackfeet highway and over the rights-of-way of its connections with the Glacier National Park road system on the Blackfeet Indian reservation in the state of Montana; providing an effective date.

Effective Date

Section 2 of Ch. 157, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

83-106. (23) Yellowstone National Park.

Compiler's Note

The case of Yellowstone Park Transp. Co. v. Gallatin County, 27 F 2d 410, cited in the annotation to this section, was reversed in 31 F 2d 644.

83-113. Consent to migratory bird reservations—jurisdiction. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land, water, or land and water, in the state of Montana, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of Congress approved February 18, 1929, (as amended), entitled "An Act to More Effectively Meet the Obligations of the United States under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and other Causes by the Acquisition of Areas of Land and of Water to furnish in Perpetuity Reservations for the Adequate Protection of such Birds; and Authorizing Appropriations for the Establishment of such Areas, their

Maintenance and Improvement and for other Purposes," reserving however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of Congress.

History: En. Sec. 1, Ch. 96, L. 1961.

Title of Act

An act consenting to the acquisition by the United States of land, water, or land and water, within the state of Montana for migratory bird reservations authorized by the act of Congress of February 18, 1929, (as amended), and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 96, Laws 1961 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—PERSONS COMPOSING THE PEOPLE OF THE STATE—RESIDENCE, RULES FOR DETERMINING

83-303. (33) Residence, rules for determining.

Guides for Interpretation

The rules set forth in this section are guides for interpretation of the meaning of "residence" which must be applied to each case in the light of the facts of that case; they are not a definition. McCarthy v. Montana Power Co., 143 M 134, 387 P 2d 438.

Resident Freeholder

A freeholder becomes a resident under this section upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. Kunesh v. Great Falls, 132 M 285, 317 P 2d 297, 301.

Wandering Child

A wandering thirteen-year-old child from another state was incapable of establishing residence in Montana where she had no means of support and roamed from place to place for approximately one month. State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 M 209, 376 P 2d 1002, 1003.

References

Cited in Murphy v. Murphy, 134 M 594, 335 P 2d 296, 298.

CHAPTER 5—ACCEPTANCE OF AMENDMENTS TO ENABLING ACT

Section 83-503. Acceptance of congressional amendment to sec. 12 of the enabling act.

83-503. Acceptance of congressional amendment to sec. 12 of the enabling act. The state of Montana hereby accepts the amendment to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957, (Public Law 6, 85th Congress), which amendment reads as follows:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, that section 12 of the act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved February 22, 1889, is amended to read as follows: 'That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive and judicial purposes, including con-

struction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.'

"Sec. 2. This act shall take effect as of February 22, 1889." Approved February 26, 1957.

History: En. Sec. 1, Ch. 209, L. 1957.

Title of Act

An act accepting the amendment enacted by Congress to section twelve of the enabling act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States, February 26, 1957; and providing for an effective date.

Repealing Clause

Section 2 of Ch. 209, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 209, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

CHAPTER 7—TORT ACTIONS AGAINST STATE

Section 83-701. Jurisdiction of district courts—limitation of liability of state to the extent of insurance coverage—no liability for punitive damages or interest—costs.
83-702. Practice and procedure.
83-703. Right of appeal—bond not to be required of state.
83-704. Attorney general—service of process upon—power to arbitrate, compromise and settle.
83-705. Judgment as obligation of state.
83-706. Effect of insurance—immunity of state for claims in excess of collectible insurance.
83-707. Act not to affect causes of action arising under workmen's compensation act.

83-701. Jurisdiction of district courts—limitation of liability of state to the extent of insurance coverage—no liability for punitive damages or interest—costs. The district courts of the state of Montana shall have exclusive jurisdiction to hear, determine, and render judgment to the extent of the insurance coverage carried by the state of Montana on any claim against the state of Montana for money only, accruing on or after the passage and approval of this act, on account of damage to or loss of property, or on account of personal injuries or death caused by the negligence or wrongful act or omission of any employee of the state of Montana, while acting within the scope of his office or employment, under circumstances where the state of Montana, if a private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the state of Montana. The state of Montana shall be liable in respect of such claims to the said claimant in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to judgment, nor for punitive damages. Cost shall be allowed in all courts to the successful claimant, to the same extent if the state of Montana were a private litigant, except that such costs shall not include attorneys' fees.

History: En. Sec. 1, Ch. 254, L. 1959.

Title of Act

An act permitting actions on tort claims against the state of Montana to the

extent of the insurance coverage carried by the state of Montana; describing the practice and procedure therefor; providing that where insurance is applicable, settlement compromise or judgment shall be subject to such insuring provisions; containing a repealing clause and providing for an effective date.

83-702. Practice and procedure. In actions under the provisions of this act, the forms of process, writs, pleadings and motions, and the practice and procedure shall be the same as if the state of Montana were a private person, and the same provisions for counterclaim and setoff, and for interest upon judgment shall be the same as if the state of Montana were a private person.

History: En. Sec. 2, Ch. 254, L. 1959.

83-703. Right of appeal—bond not to be required of state. The right of appeal from final judgment in the district court shall be governed by the same rules of practice and procedure that exist for private persons, except the state of Montana shall at no time be required to post a bond either on appeal or at any other time during the said litigation.

History: En. Sec. 3, Ch. 254, L. 1959.

83-704. Attorney general—service of process upon—power to arbitrate, compromise and settle. The attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served, and he shall have full charge of such litigation on behalf of the state of Montana, and by and with the consent of the board of examiners of the state of Montana, he is authorized to arbitrate, compromise or settle any claim cognizable under this act, after the institution of any suit thereon, and further, with the approval of the court in which said suit is pending.

History: En. Sec. 4, Ch. 254, L. 1959.

83-705. Judgment as obligation of state. A final judgment shall be the obligation of the state of Montana, and shall be paid in the same manner as other claims against the state.

History: En. Sec. 5, Ch. 254, L. 1959.

83-706. Effect of insurance—immunity of state for claims in excess of collectible insurance. Where collectible insurance coverage from any insurer is available to pay on behalf of, or to indemnify, the state of Montana, for any settlement, compromise or judgment under this act, any cause of action shall be subject to the terms and conditions of such policy or policies of insurance applicable; and in such event the state of Montana shall be immune under this act from any claim or demand, including judgments, in excess of such collectible insurance.

History: En. Sec. 6, Ch. 254, L. 1959.

83-707. Act not to affect causes of action arising under workmen's compensation act. Nothing herein contained shall be construed to affect any cause of action arising under the workmen's compensation act.

History: En. Sec. 7, Ch. 254, L. 1959.

Repealing Clause

Section 9 of Ch. 254, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 254, Laws 1959 provided the act should be in effect from and after the date of its passage and approval. Approved March 13, 1959.

CHAPTER 8—JURISDICTION OF INDIAN COUNTRY

Section 83-801. Criminal jurisdiction of Flathead Indian country to be assumed.
83-802. Resolution of Indian tribes requesting state jurisdiction—governor's proclamation—consent of county commissioners.
83-803. Date of assumption of jurisdiction—application of state law in Indian country.
83-804. Rights, privileges and immunities reserved to Indians.
83-805. Indian culture protected.
83-806. Withdrawal of consent to state jurisdiction.

83-801. Criminal jurisdiction of Flathead Indian country to be assumed. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session).

History: En. Sec. 1, Ch. 81, L. 1963.

Title of Act

An act to provide for the assumption of criminal and/or civil jurisdiction over the Confederated Salish and Kootenai Indians and their reservation and land as authorized by federal law; providing the time and the method thereof, and the duty of the governor with respect thereto.

83-802. Resolution of Indian tribes requesting state jurisdiction—governor's proclamation—consent of county commissioners. Whenever the governor of this state shall receive from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes, community, band or group of Indians in this state, a resolution, expressing its desire that its people and lands be subject to the criminal and/or civil jurisdiction of the state of Montana to the extent authorized by federal law and regulation, he shall issue within sixty (60) days a proclamation to the effect that such jurisdiction shall apply to those Indians and their territory, or reservation in accordance with the provisions of this act; provided, that he shall not issue such proclamation until such resolution has been approved in the manner provided for by the charter, constitution or other fundamental law of the tribe or tribes, if said document provides for such approval; provided further that he shall not issue such proclamation until there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

History: En. Sec. 2, Ch. 81, L. 1963.

83-803. Date of assumption of jurisdiction—application of state law in Indian country. Sixty (60) days from the date of issuance of the proclamation of the governor as provided for by section 2 [83-802] of this act, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and the criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

History: En. Sec. 3, Ch. 81, L. 1963.

83-804. Rights, privileges and immunities reserved to Indians. Nothing in this act shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band or community of any right, privilege or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing or the control, licensing or regulation thereof.

History: En. Sec. 4, Ch. 81, L. 1963.

83-805. Indian culture protected. Nothing in this act shall deprive, the Indian tribe, band or community from carrying on its age-old tribal dances, feasting or customary Indian celebrations or in any way try to destroy the Indian culture.

History: En. Sec. 5, Ch. 81, L. 1963.

83-806. Withdrawal of consent to state jurisdiction. Any Indian tribe, community, band or group of Indians that may consent to come within the provisions of this act may, within two (2) years from the date of the governor's proclamation, withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within sixty (60) days after receipt of such resolution the governor shall issue a proclamation to that effect.

History: En. Sec. 6, Ch. 81, L. 1963.

TITLE 84—TAXATION

Chapter 2. Property subject to taxation—basis for taxation, 84-202, 84-204 to 84-206.
3. Classification of property for taxation—basis for taxation, 84-301, 84-302, 84-308.
4. Assessment of property—powers, duties and liability of county assessor, 84-406, 84-429.7 to 84-429.13.
6. Equalization of taxes by county boards of equalization, 84-602 to 84-604.
7. Equalization of taxes and administration and supervision of all tax laws by state board of equalization, 84-702, 84-708, 84-710, 84-724 to 84-735.
15. License taxes—corporation license tax, 84-1501, 84-1501.1 to 84-1501.3, 84-1502 to 84-1505, 84-1508, 84-1508.1, 84-1508.2, 84-1511, 84-1515.
16. License taxes—electrical energy producers, 84-1601.
18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803.1, 84-1805.1, 84-1807, 84-1809, 84-1812, 84-1813, 84-1817, 84-1818, 84-1818.1, 84-1819, 84-1831 to 84-1835, 84-1839, 84-1840, 84-1842 to 84-1844.
19. License and other tax proceeds—how disposed of, 84-1901.
20. License taxes—metalliferous mines, 84-2004, 84-2006, 84-2007.
21. License taxes—natural gas distributors, 84-2102.
22. License taxes—oil producers, 84-2202.
24. License taxes—store license, 84-2402, 84-2404 to 84-2407.
26. License taxes—telephone companies, 84-2601, 84-2602.
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28. Licenses—furnishing trading stamps with sale of merchandise, 84-2805 to 84-2812, Unconstitutional.
33. Licenses—moving picture theaters, Repealed—Section 1, Chapter 33, Laws of 1957.
38. Levy of taxes, 84-3804, 84-3807.
41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4132.1, 84-4198.
42. Collection of personal property taxes not a lien on real estate—road and poor taxes, 84-4202.
45. Protest payment of taxes—action to recover, 84-4501.
47. Cities and towns—taxation and license, 84-4701.1 to 84-4701.5, 84-4711.
48. Freight line companies—taxation, 84-4825.
49. Income tax, 84-4901 to 84-4903, 84-4903.1 to 84-4903.13, 84-4905, 84-4907, 84-4907.1, 84-4910, 84-4911, 84-4914, 84-4915, 84-4922, 84-4923.1, 84-4924, 84-4937, 84-4943, 84-4956, 84-4958.
52. Livestock taxation, 84-5211, 84-5212, 84-5214.
54. Mines taxation—general property and net proceeds tax, 84-5403, 84-5408, 84-5409.
56. Cigarette tax—licenses—stamps, 84-5601, 84-5602, 84-5606, 84-5606.1, 84-5607 to 84-5609, 84-5621.
62. Mines or wells producing natural gas or petroleum—net proceeds tax, 84-6208.
65. License taxes—racing associations, 84-6502 to 84-6504.
66. Property tax on house trailers, 84-6601 to 84-6605.

CHAPTER 2—PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

Section 84-202. Exemptions from taxation.
84-204. Public property taxable when held under contract of sale or lease with option to purchase.
84-205. Assessment of public property to contract purchaser or lessee—attachment of lien.
84-206. Irrigation and drainage facilities taxable.

84-202. (1998) **Exemptions from taxation.** The property of the United States, the state, counties, cities, towns, school districts, municipal

corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

History: Ap. p. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1931; amd. Sec. 1, Ch. 85, L. 1965. Cal. Pol. C. Secs. 3607 and 3611.

Amendment

The 1965 amendment inserted the first proviso, which defines "institutions of purely public charity."

Repealing Clause

Section 2 of Ch. 85, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 85, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 27, 1965.

84-204. Public property taxable when held under contract of sale or lease with option to purchase. Property of the state of Montana or any department, agency or subdivision thereof or any other property not subject to ad valorem tax to the owner thereof by reason of the legal status of the owner held under contract of sale or lease with option to purchase with lease moneys applicable to purchase price by any person, corporation or other association for his or its exclusive use shall be subject to assessment to purchaser or lessee for ad valorem property taxation.

History: En. Sec. 1, Ch. 39, L. 1965.

Title of Act

An act to subject to assessment and taxation interests in property of the state of Montana held by taxable ownerships.

84-205. Assessment of public property to contract purchaser or lessee —attachment of lien. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, corporation or association, such property shall be assessed to such person, firm or corporation and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid; provided that the lien for such tax neither attach to, impair or be enforced against any interest of the state of Montana or any department, agency or subdivision thereof.

History: En. Sec. 2, Ch. 39, L. 1965.

Effective Date

Section 3 of Ch. 39, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

84-206. Irrigation and drainage facilities taxable. All irrigation and drainage facilities including bonds, rights of way, ditches, flumes, pipelines, dams, water rights, reservoirs and other property of like character shall be taxed as like facilities of the federal and state government; in cases where property taxes apply, and where an increase in land value results, such facilities shall be taxed as such land is improved, and such land shall be classified for tax purposes as the tax classification law provides.

History: En. Sec. 1, Ch. 193, L. 1965.

Title of Act

An act relating to taxation of irrigation and drainage facilities.

CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

Section 84-301. Classification of property for taxation.
84-302. Basis for imposition of taxes.
84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

84-301. (1999) **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used there-

with, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all water craft, harness, saddlery and robes.

Class Three. Livestock, poultry and the unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith; and all office or hotel furniture and fixtures.

Class Four. All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract of purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five or Class Seven.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

Class Six. Property formerly included in this class is now classified by section 84-308 of the Revised Codes of Montana, 1947.

Class Seven. All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961 within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean prop-

erty which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. Any improvement on real property valued at not more than fifteen thousand dollars ($15,000), which is owned and actually occupied by a widow, with or without minor or dependent children, or by: (1) a widow 62 years of age or older, whether with or without minor or dependent children, or

(2) a widower 65 years of age or older, whether with or without minor or dependent children, or

(3) a widow with minor or dependent children regardless of age, or

(4) a recipient of retirement benefits not exceeding one hundred fifty dollars ($150) per month, if single, or two hundred fifty dollars ($250) per month if married. Provided such owner and occupier is not gainfully employed to such an extent as would render him or her ineligible for social security benefits, should he or she be otherwise eligible for such benefits, and does not have income from all sources, excluding retirement benefits as mentioned in (4) hereinabove, in excess of one thousand five hundred dollars ($1,500) per year. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a form as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with none other than his or her spouse, minor or dependent children, or persons not responsible for all or any part of the financial support of the affiant, and that the improvements are not used for income producing purposes other than such purposes as are normally permitted in or on such improvements, with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. All property not included in the eight preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957; amd. Sec. 1, Ch. 103, L. 1961; amd. Sec. 2, Ch. 239, L. 1961; amd. Sec. 1, Ch. 168, L. 1965.

Compiler's Note

This section was amended twice in 1961, once by Ch. 103, Laws 1961, approved March 1, 1961, and once by Ch. 239, Laws 1961, approved March 14, 1961. Neither act referred to or contained the amendments made by the other. Chapter 103 contained an emergency clause and provided that it should be in effect upon approval, but Ch. 239 did not. The two amendments do not appear to conflict, and if they do not conflict, both would be in effect. The section set out above incorporates the changes made by both acts.

Amendments

The 1957 amendment in Class Five, subd. (b) inserted the words "and cooperative rural telephone" and deleted a former subd. (d) which read "Industrial property included in Class Four, for a period of three years after such property is first assessed. Industrial property for the purposes of this act shall not be construed to include agricultural or commercial property" and rewrote Class Six, see Class Six above.

Chapter 103, Laws 1961, inserted in the paragraph defining Class Four the words "and all trailers affixed to land owned, leased, or under contract of purchase by the trailer owner."

Chapter 239, Laws 1961, added the reference to Class Seven at the end of the paragraph defining Class Four; inserted a new paragraph defining Class Seven; and redesignated former Class Seven as Class Eight.

The 1965 amendment inserted new provisions for Class Eight and redesignated former Class Eight as Class Nine.

Purpose of Amendment

Section 1 of Ch. 239, Laws 1961, read as follows: "STATEMENT OF PURPOSE. The legislative assembly of the state of Montana hereby declares that it is in the best interests of the people of this state to encourage and stimulate the establishment of new industry within Montana. It recognizes that a new industrial plant does not reach full productivity and competitive capacity during the initial years of its operation. Since taxation of property should be related to property in proportion to its use, productivity, utility, and general setting in the economic organization of society, the purpose of this act is to provide a separate classification for new industrial property which gives proper recognition to these factors and places such property in the proper class for taxation purposes."

Repealing Clauses

Section 2 of Ch. 88, Laws 1957 and Sec. 3 of Ch. 103, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 88, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 4, 1957.

Section 2 of Ch. 103, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 1, 1961.

Bank Shares and Capital

All bank shares and "moneyed capital," of banks are subject to the same classification. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 908.

Pipelines

Pipelines should be classified in class 7 (now Class 9) of this section. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 69, 71.

DECISIONS UNDER FORMER LAW

1951 Amendment Unconstitutional

Chapter 178 of Laws 1951 is an unconstitutional exercise of the legislative function to classify property for taxation. Victor Chemical Works v. Silver Bow County, 130 M 308, 301 P 2d 730, 737. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.)

Chapter 178 of Laws 1951, by permitting the reclassification of some industrial property into Class 5 while similar property is in Class 4 thwarts the mandate of sections 1 and 11 of Art. XII of the Constitution and is invalid. Victor Chemical Works v. Silver Bow County, 130 M 308, 301 P 2d 730. (Concurring and dissenting opinion, 130 M 308, 301 P 2d 730, 737.)

84-302. (2000) **Basis for imposition of taxes.** As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100 %) of its true and full value.

Class 2. Twenty per cent (20 %) of its true and full value.

Class 3. Thirty-three and one-third per cent (33 1/3 %) of its true and full value.

Class 4. Thirty per cent (30 %) of its true and full value.

Class 5. Seven per cent (7 %) of its true and full value.

Class 6. Forty per cent (40 %) of its true and full value.

Class 7. Seven per cent (7 %) of its true and full value.

Class 8. Twenty per cent (20 %) of its true and full value.

Class 9. Forty per cent (40 %) of its true and full value.

History: En. Sec. 2, Ch. 51, L. 1919; re-en. Sec. 2000, R. C. M. 1921; amd. Sec. 3, Ch. 239, L. 1961; amd. Sec. 2, Ch. 168, L. 1965.

Amendments

The 1961 amendment inserted a new provision for Class 7 and redesignated former Class 7 as Class 8. See note under sec. 84-301 as to amendment of that section by Ch. 239, Laws 1961.

The 1965 amendment inserted the provision for Class 8; changed the designation of former Class 8 to Class 9; and made minor changes in style.

Separability Clause

Section 5 of Ch. 239, Laws 1961 read "If any provision of this act, or the application thereof to any person or circumstance, is held unconstitutional, the remainder of the act, or the application of such provisions to other persons or circumstances, shall not be affected thereby."

Repealing Clauses

Section 4 of Ch. 239, Laws 1961 and Sec. 3 of Ch. 168, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 168, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

84-308. (2000.6) **Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state board of equalization shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

History: En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957.

Amendment

The 1957 amendment added all that portion of the third paragraph beginning with the words "on that portion of the true and full value and not represented by surplus * * *" to end of section.

Repealing Clause

Section 2 of Ch. 172, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 172, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 8, 1957.

Effect of Amendment

Laws 1957, Ch. 172, which amended this section does not result in remitting, releasing, or diminishing an "obligation or liability" held or owned by the state or city. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 908.

Parties to Action for Taxes

Where the banks of county paid their 1957 taxes in accordance with the taxable value determined under this section before amendment by Laws of 1957, Ch. 172, as a part of a compromise settlement, an action by the state on relation of the county was dismissed as moot where banks of county were not made parties to the action. State ex rel. Cascade County v. Ryan, 137 M 379, 351 P 2d 916, 918.

CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

Section 84-406. Time of assessment—motor vehicles—livestock.
84-429.7. Classification and appraisal—duties of county commissioners.
84-429.8. Classification and appraisal fund—tax levy for.
84-429.9. Assessments to be made on classification and appraisal.
84-429.10. Initiation and completion of classification and appraisal.
84-429.11. Notice of classification and appraisal to owners—appeals.
84-429.12. Classification and appraisal—general and uniform methods.
84-429.13. Work done under prior law.

84-401. (2001) **Property assessed at cash value.**

Assessment of Pipelines

The state board of equalization did not act arbitrarily or capriciously in assessing pipeline at 50% of the current replacement cost, even though there was an increase in the assessed value of the property over the preceding year. Treasure State Pipe Line Co. v. County of Toole, 136 M 108, 345 P 2d 162.

84-406. (2002) **Time of assessment—motor vehicles—livestock.** (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding, except that such procedure shall not apply to

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may by subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(2) The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock M. of the first day of January in each year.

Nothing herein contained shall relieve the applicant for registration or reregistration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or reregistration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the

value of livestock more than six months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965. Cal. Pol. C. Sec. 3628.

Amendments

The 1963 amendment deleted the words "which are not a part of the stock of merchandise of a licensed dealer and" following "motor vehicles" in subsection (1); and deleted from the end of the first paragraph of subsection (2) a clause reading, "save and except that motor vehicles held for sale in the stock of any duly licensed motor vehicle dealer, shall be assessed as merchandise to such licensed dealer by whom the same were owned or claimed, or in whose possession or control the same were held at twelve o'clock of the first Monday of March in each year, and at the time such motor vehicles are assessed as merchandise each licensed dealer shall file with the assessor a description of each motor vehicle so assessed, including the make, year model, engine and serial number, manufacturer's model or letter, gross weight, and, with respect to trucks, the rated capacity thereof."

The 1965 amendment divided subsection (1) into paragraphs; designated the second paragraph (a); and added the first sentence of paragraph (1) (b) and subsection (3).

Cross-Reference

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

84-429. (2023) Land—how assessed.

References

Cited in Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 503.

84-429.1 to 84-429.6. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 198, L. 1955), relating to classification and appraisal of all taxable lands, were repealed by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957. For almost identical provisions see 84-429.7 to 84-429.13.

DECISIONS UNDER FORMER LAW

Unconstitutional

This act purports to tax for a public purpose, one class of property only and entirely excludes and exempts all other classes of property. It exempts all personal property from taxation and is therefore violative of section 2 of article XII of the Montana Constitution. Schladweiler v. State Board of Equalization, 131 M 13, 306 P 2d 673, reaffirming Stoner v. Timmons, 59 M 158, 196 P 519.

Individual Assessment

Only individual assessment by individual ownership will satisfy this section. Vail v. Custer County, 132 M 205, 315 P 2d 993, 998.

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under section 84-4151. Vail v. Custer County, 132 M 205, 315 P 2d 993, 999.

Limitation of Action

Irrigation district's purported special assessments for 1921 through 1926 and the collection of water district charges due thereunder in 1949 was barred by the provisions of section 89-1804, subd. 5. Vail v. Custer County, 132 M 205, 315 P 2d 993, 1000.

Situs of Property

The first Monday in March is significant to determine and fix the situs and ownership of property for tax purposes. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 907.

Time of Assessment

The "assessing" of property is done after situs is acquired. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 907.

84-429.7. Classification and appraisal—duties of county commissioners. It is hereby made the duty of the board of county commissioners of the several counties of the state of Montana to accomplish, in such manner as the state board of equalization may direct, the following:

a. The classification of all taxable lands.

b. The appraisal of all taxable city and town lots.

c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state board of equalization. Such maps, plats, forms and books of record shall be official records of the county. A certified copy of all such records as may be desired shall be furnished to the state board of equalization, and the state board of equalization shall provide for the payment to the several counties of the cost of preparing such copy of the records so provided for, as they may require.

After compliance with the other provisions of this act, it shall be the duty of the board of county commissioners to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957.

Title of Act

An act providing for the classification of lands, and the appraisal of city and town lots and rural and urban improvements in the state of Montana for assessment and taxation purposes; defining the duties of the boards of county commissioners, county assessors, and the state board of equalization in connection therewith, providing for a tax levy; providing for an effective date and repealing sections 84-430 to 84-437 inclusive, Revised Codes of Montana of 1947, chapter 198 of the Session Laws of 1955, and all acts and parts of acts in conflict herewith.

Additional Levy for Classification and Appraisal

Chapter 226, Laws 1963, authorized additional tax levies for completion of the classification and appraisal program under certain condition. The act read: "An act to provide that where any county has not completed the classification and appraisal program as provided in section 84-429.7, R. C. M. 1957, due to lack of funds, county commissioners may levy up to two mills (2) in the 1963-64 fiscal year to complete the program.

"Section 1. In any county where the board of county commissioners has failed to complete the classification and appraisal as was made its duty in section 84-429.7, R. C. M. 1957, and is unable to do so because of insufficient funds from the levies which were authorized for said purpose under section 84-429.8, R. C. M. 1957, the board of county commissioners in such county is hereby authorized to levy, and it shall be its duty to so impose a tax upon all property in the county subject to taxation an amount not to exceed two mills (2) in the fiscal year 1963-64, to carry out the provisions of the classification and appraisal program as expeditiously as possible.

"All proceeds from such tax shall be deposited by the county treasurer to the credit of such classification and appraisal, fund, and shall be used exclusively for classification and appraisal purposes. Any unexpended balance at the end of any fiscal year shall remain in such fund and shall be available to carry out the provisions of the classification and appraisal program as was provided in section 84-429.7, R. C. M. 1957. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required under the classification and appraisal act shall be paid by warrants drawn on said funds on claims approved by said board; the board of county commissioners in any such county coming under the provisions of this act is hereby authorized to declare an emergency and issue such warrants in the manner provided in section 16-1907, R. C. M. 1947.

"Section 2. No moneys collected under the provisions of this act shall be used other than for the purposes as herein provided, and no moneys collected under the provisions of this act shall be diverted in any way to any other funds which may now exist or which may hereafter be created in the county treasurer's office, except that the legislature may modify or repeal the restrictions herein contained. The

provisions of this section shall in no way prohibit the deposit of moneys collected under this act to the credit of a classification and appraisal fund already in existence.

"Section 3. Any county official who shall violate the provisions of section 2, as regards the diversion or use of funds shall be guilty of a felony and upon conviction shall be fined not less than one thousand dollars ($1,000), and in addition may be imprisoned in the state prison for a period not to exceed one year (1).

"Section 4. The provisions of this act shall in no way be construed to apply to those counties which have completed the classification of all taxable lands, the appraisal of all taxable city and town lots, and the appraisal of all taxable rural and urban improvements.

"Section 5. This act shall become effective immediately upon its passage and approval." Approved March 9, 1963.

Hearings on Value Classification

Where the state board of equalization, acting under this section through section 84-429.13 and pursuant to section 84-710, R. C. M. 1947, held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

Jurisdiction of District Court

District court had jurisdiction of action by taxpayers against state and county boards of equalization where the amended complaint sufficiently alleged that the appraisal leading to an assessment was being done contrary to this act. State ex rel. Fulton v. District Court, 140 M 166, 369 P 2d 416, 417.

84-429.8. Classification and appraisal fund—tax levy for. The board of county commissioners shall create and establish a fund to be known as the "Classification and Appraisal Fund," and may, beginning with the fiscal year which commences July 1, 1965, levy annually a tax not to exceed one (1) mill upon all property in the county subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of such fund, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act and to maintain and keep current the classification of all taxable lands and appraisals of city and town lots and rural and urban improvements. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by said board; and the board of county commissioners is hereby authorized to declare an emergency and issue such warrants in the manner provided by section 16-1907 of the Revised Codes of Montana of 1947.

History: En. Sec. 2, Ch. 191, L. 1957; amd. Sec. 1, Ch. 23, L. 1965.

Amendment

The 1965 amendment reduced the maximum levy specified in the first sentence from two mills to one mill; inserted "beginning with the fiscal year which commences July 1, 1965" in the first sentence; and added at the end of the first sentence the words "and to maintain and keep current the classification of all taxable lands and appraisals of city and town lots and rural and urban improvements."

84-429.9. Assessments to be made on classification and appraisal. The county assessor must base the assessments of all lands, city and town lots, and all improvements on the classification and appraisal as made by the board of county commissioners.

History: En. Sec. 3, Ch. 191, L. 1957.

84-429.10. Initiation and completion of classification and appraisal. It is the intent of this act that classification and appraisal be initiated ex-

peditiously, but in no event later than July 1, 1957 and shall be completed not later than five (5) years from the effective date of this act.

History: En. Sec. 4, Ch. 191, L. 1957.

84-429.11. Notice of classification and appraisal to owners—appeals. It shall be the duty of the board of county commissioners to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the board of county commissioners shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the board of county commissioners shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the board of county commissioners. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the board of commissioners he shall have the right to appeal to the state board of equalization whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957.

84-429.12. Classification and appraisal—general and uniform methods. It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timber lands.

History: En. Sec. 6, Ch. 191, L. 1957.

84-429.13. Work done under prior law. Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements, under the provisions of chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of this act.

History: En. Sec. 7, Ch. 191, L. 1957.

Repealing Clause

Section 8 of Ch. 191, Laws 1957 read "Sections 84-430 to 84-437, inclusive, of the Revised Codes of Montana, 1947, and chapter 198 of the Session Laws of 1955, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 9 of Ch. 191, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

84-430 to 84-437. (2024 to 2031) **Repealed.**

Repeal

These sections (Secs. 1 to 8, Ch. 239, L. 1921), relating to a uniform method of classification of property for tax purposes, were repealed by Sec. 8, Ch. 191, Laws 1957, effective March 9, 1957.

These sections had earlier been repealed by Sec. 7, Ch. 198, Laws 1955, effective March 4, 1955. See Repeal Note under these sections in the parent volume.

CHAPTER 5—ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL

84-501. (2048) **Property—how listed.**

References

Cited in Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 914.

CHAPTER 6—EQUALIZATION OF TAXES BY COUNTY BOARDS OF EQUALIZATION

Section 84-602. Equalization of assessments.
84-603. Application for reduction in valuations.
84-604. Examination of applicant.

84-602. (2114) **Equalization of assessments.** The board has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the board shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known place of residence. The board also has power, in the event that any class of property is assessed as a class, at more or less than its actual value, by the county assessor and the valuation of such property within the county demands a general reclassification by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of county commissioners.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933; amd. Sec. 1, Ch. 196, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted the words "in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment" for the words "in such matter as it may by rule

prescribe, to increase or lower any assessment," inserted the words "which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice" and inserted the words "or certified" before the word "mail" near the end of sentence.

84-603. (2115) **Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board on or before the 1st day of August, a written application therefor, verified by his oath. Said application shall state the post office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The board of county commissioners shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3674.

Amendment

The 1957 amendment inserted the words "state the post office address of the applicant" in the second sentence.

References

Cited or applied in Treasure State Pipe Line Co. v. County of Toole, 136 M 108, 345 P 2d 162, 163.

84-604. (2116) **Examination of applicant.** Before the board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry; except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of a certain class of property in the county. The testimony of all witnesses upon such hearing must be reduced to writing and preserved, and transcribed if taken in shorthand or stenotype. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187. L. 1933; amd. Sec. 3, Ch. 196, L. 1957. Cal. Pol. C. Sec. 3675.

Amendment

The 1957 amendment substituted "any application" for "the application" and "each person" for "such person" in the first sentence; inserted the words "as provided in the preceding section" and the words "as such board of equalization" in the second sentence and added the third sentence.

Repealing Clause

Section 4 of Ch. 196, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 196, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

84-605. (2116.1) **Change of valuation of class of property, etc.**

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Proceedings

Where the state board of equalization held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

Writ of Prohibition

Action of district court in issuing writ of prohibition against state board of equalization was premature where it prohibited the board from proceeding further under this section and prevented the board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

CHAPTER 7—EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

Section 84-702. Qualification and compensation.
84-708. Powers and duties.
84-710. Notice of intention to change assessment.
84-724. Destruction of tax records authorized—procedure.
84-725. Suspense account for receipts and refunds.
84-726. Refund of overpayments—time of filing claims for refund—procedure.
84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration.
84-728. Valuation of interstate fleets—determination of aggregate tax due.
84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration.
84-730. Situs in state of proportionally registered fleets—collection of property tax.
84-731. Deposit and distribution of taxes on proportionally registered fleets.
84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee.
84-733. Corporation license tax clearance certificates furnished—fee.
84-734. Fees to reimburse board for costs—deposit in general fund.
84-735. Returns to which act applies.

84-701. (2122.1) **State board of equalization—appointment of members, etc.**

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

84-702. (2122.2) **Qualification and compensation.** The persons to be appointed as members of the board of equalization shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office. Each member shall receive an annual salary of not more than ten thousand dollars ($10,000) payable in equal monthly installments. The member elected chairman as provided for in 84-703, R.C.M. 1947,

shall receive additional compensation of not more than five hundred dollars ($500) per annum payable in the same manner as the salary. He shall also be paid his actual traveling and other expenses when away from the capitol on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963.

Amendment

The 1963 amendment substituted the provision for maximum salaries of $10,000 for a provision fixing the salaries at $7,000; inserted the sentence providing extra compensation for the chairman; and made a minor change in phraseology.

84-706. (2122.6) **Office, furnishings and supplies.**

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 397 (dissenting opinion).

84-708. (2122.8) **Powers and duties.** It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) to (5). * * * [Same as parent volume.]

(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose shall call an annual meeting of all county assessors to be held at the state capitol and notice shall be given to each county assessor at least ten (10) days before such meeting, and it shall be the duty of all county assessors to attend and the costs of their attendance shall be paid by the respective counties. Further, the state board of equalization is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the board and the costs of such appraisers and assessors attending shall be borne by the respective counties. Further, the state board shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary, on the campus of Montana state university in cooperation with the bureau of business and economic research and the school of business administration, providing that there are university facilities and authorities available. The board shall notify all assessors and appraisers and county commissioners at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the respective counties. Further, one or more members of the board shall visit at least one fourth (¼) of the counties of the state annually, and shall visit every county in the state at least once in four (4) years to examine the work and methods of county assessors, boards of county commissioners, county boards of equalization, and county treasurers in their assessment and equalization of taxes on all kinds of property within the county.

(7) to (17). * * * [Same as parent volume.]

(18) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963.

Amendments

The 1957 amendment in subd. 18 added the words "and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures" and deleted a former subd. (19) which read "(19) To exercise and perform such further powers and duties as are or may be granted to or imposed upon the board by law."

The 1963 amendment substituted all that portion of subsection (6) following "for that purpose" in the first sentence for "may visit each county in the state whenever deemed necessary, and may call, not to exceed one meeting of the county assessors each year at the capitol, for consultation and instruction, the expense of such attendance to be paid by the respective counties."

Repealing Clause

Section 2 of Ch. 137, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 137, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 7, 1957.

Intervention of Court

Court may not intervene where action of the board is not arbitrary, fraudulent or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

References

Cited in Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

84-710. (2122.10) **Notice of intention to change assessment.** When the state board of equalization shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state board) said board shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by certified letter deposited in the post office postpaid, and directed to said taxpayer at his last known place of residence, at least ten (10) days before the day fixed for such hearing. Such notice shall state

the purpose of such hearing and the time and place when the same will be held.

When the state board of equalization shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the board shall fix the time and place of hearing so as to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

History: En. Sec. 10, Ch. 3, L. 1923; amd. Sec. 1, Ch. 89, L. 1959.

Amendment

The 1959 amendment, in the first paragraph, substituted "certified letter" for "registered letter."

Repealing Clause

Section 2 of Ch. 89, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Proceedings

Where the state board of equalization acting under this section held "show cause hearings" to afford opportunity to protest the board's order of uniform land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

References

Cited in State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

84-724. Destruction of tax records authorized—procedure. Notwithstanding the provisions of any other chapter of this code, the state board of equalization is authorized to destroy tax records more than five (5) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be by unanimous vote of the members of the state board of equalization entered upon an authenticated list of records authorized to be destroyed. A copy of the authorization and authenticated list shall be entered in the minutes of the board by its secretary.

History: En. Sec. 1, Ch. 187, L. 1963.

Title of Act

An act providing for the destruction of tax records.

Repealing Clause

Section 2 of Ch. 187, Laws 1963 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 187, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

84-725. Suspense account for receipts and refunds. The state board of equalization shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the board. All moneys received by the board shall be temporarily credited by the state treasurer to the board's suspense

account. Each month the board shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

History: En. Sec. 1, Ch. 126, L. 1963.

Title of Act

An act creating a state board of equalization suspense account for the temporary deposit of moneys; authorizing the state board of equalization to refund overpayments of the inheritance tax and all other taxes collected by the board, plus any interest and penalty due the taxpayer, from the suspense account; amending sections 91-4418, 84-4501, 84-4825, 84-1812, 84-1818 R. C. M. 1947 and repealing sections 84-4953 and 84-4957 R. C. M. 1947.

84-726. Refund of overpayments—time of filing claims for refund—procedure. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the state board of equalization, and there is no law providing for a refund, the board shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state board of equalization shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the taxpayer and shall grant a hearing on the claim. If the board disapproves a claim after holding a hearing, the determination of the board may be reviewed as provided by section 84-4923.1, R. C. M. 1947.

History: En. Sec. 2, Ch. 126, L. 1963.

84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration. The state board of equalization shall assess, for the purpose of personal property taxes, interstate motor vehicle fleets proportionally registered under the provision of chapter 206, Laws of 1963 [53-701 to 53-724], and said assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by section 12, chapter 206, Laws of 1963 [53-712]. Interstate motor vehicle fleets are hereby declared assessable for taxation purposes upon application for proportional registration and shall be assessed to the persons who own or claim, or in whose possession or control the fleet is at the time of the application. Any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this act or any other provision of the laws of Montana between January 1st and April 1st shall be taxed for a full year. Any fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this act or any other law of the state of Montana after April 1st shall have taxes apportioned as provided in section 84-6011, R. C. M. 1947, as amended. Any fleet, contained in a renewal application, shall be assessed and taxed for a full year. Vehicles contained in a fleet for which current taxes have been assessed and paid shall not be assessed

under this section upon presentation to the board of equalization of proof of payment of tax for the current registration year. The payment of personal property taxes are a condition precedent to proportional registration or re-registration of an interstate motor vehicle fleet.

History: En. Sec. 1, Ch. 89, L. 1965.

Title of Act

An act for the assessment and collection of personal property taxes on proportionally registered interstate motor vehicle fleets; providing a formula for computing a statewide average county mill levy; and providing the method for the distribution of this tax to the counties.

84-728. Valuation of interstate fleets—determination of aggregate tax due. The state board of equalization shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(a) The purchase price depreciated by a schedule as prescribed by the board shall determine the depreciated value.

(b) The depreciated value multiplied by the per cent of miles traveled in Montana as prescribed by section 12, chapter 206, Laws of 1963 [53-712], shall be the assessed value.

(c) The sum of the assessed value of all vehicles included in the fleet multiplied by twenty (20) per cent shall be the taxable value for the entire fleet.

(d) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the statewide average county mill levy plus state levies as hereinafter provided.

History: En. Sec. 2, Ch. 89, L. 1965.

84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration. The state board of equalization shall determine the aggregate tax in the entire state for: (1) state, (2) county, (3) local purposes, levied on the general property of the state in the previous year excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection and protection purposes.

From the total taxable valuation of the general property of the state including net proceeds and the aggregate tax as determined, the state board of equalization shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of all interstate trucks.

The original cost of each vehicle shall be included on the application for proportional registration under the provision of chapter 206, Laws of 1963 [53-701 to 53-724]. The board shall determine the original cost when the owner does not have this information on new or used vehicles, or in the case of rebuilt vehicles.

History: En. Sec. 3, Ch. 89, L. 1965.

84-730. Situs in state of proportionally registered fleets—collection of property tax. For the purposes of this section, all vehicles previously

registered or which registration has been applied for, under the provision of chapter 206, Laws of 1963 [53-701 to 53-724], are hereby declared to have a situs in the state for the purposes of taxation.

The board or its designated agent shall collect the personal property taxes prescribed herein.

History: En. Sec. 4, Ch. 89, L. 1965.

84-731. Deposit and distribution of taxes on proportionally registered fleets. The personal property taxes described herein and collected shall be deposited with the state treasurer for distribution to the general fund of each county according to the ratio of the taxable valuation of each county to the total state taxable valuation.

History: En. Sec. 5, Ch. 89, L. 1965.

84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee. Certified copies of returns filed for corporation license tax under section 84-1504, R. C. M. 1947, and certified copies of returns filed for income tax under section 84-4919, R. C. M. 1947, may be furnished by the board of equalization to the taxpayer or his duly authorized representative upon payment of fifty cents (50¢) for each page.

History: En. Sec. 1, Ch. 187, L. 1965.

Title of Act

An act to provide a charge of fifty cents (50¢) per page for copies of income tax returns or corporation license tax returns and a charge of one dollar ($1) for issuance of a certificate of good standing.

84-733. Corporation license tax clearance certificates furnished—fee. Upon request of a corporation and upon the payment of one dollar ($1) the board of equalization may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed and that all information has been supplied as required by the provisions of the corporation license tax act.

History: En. Sec. 2, Ch. 187, L. 1965.

84-734. Fees to reimburse board for costs—deposit in general fund. All moneys collected under this act shall be required to reimburse the state board of equalization for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund of the state of Montana.

History: En. Sec. 3, Ch. 187, L. 1965.

84-735. Returns to which act applies. The provisions of this act shall apply to all returns on file and all returns to be filed hereafter.

History: En. Sec. 4, Ch. 187, L. 1965.

Repealing Clause

Section 5 of Ch. 187, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 187, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 9—TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER LINES ASSESSMENT BY STATE BOARD OF EQUALIZATION

84-905. (2143) **Assessment of property—apportionment, etc.**

Apportionment among Counties

Apportionment means the process by which the state board of equalization spreads out the total value of a system among the counties through which the system passes. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 61.

CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section 84-1501. Corporation license tax—organizations exempt therefrom.
84-1501.1. Definitions.
84-1501.2. Election by small business corporation.
84-1501.3. Small business option unavailable on dissolution—exception.
84-1502. Deductions allowed in computing income.
84-1503. Segregation of income within and without state.
84-1504. Computation of license tax—return of net income to be filed.
84-1505. Assessment and collection of tax.
84-1508. Regulations—attendance of witnesses—arbitrary assignment of net income.
84-1508.1. Determination of tax liability—interest on deficiencies and overpayments.
84-1508.2. Periods of limitation—waiver.
84-1511. Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy.
84-1515. Reviver of corporation after suspension or forfeiture.

84-1501. (2296) **Corporation license tax—organizations exempt therefrom.** The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be five and one-quarter per centum (5¼ %) of all net income for the taxable period, provided however, that as to all taxable periods ending on or after February 28, 1967, whether on a calendar or fiscal year basis, the percentage of net income to be paid under this act shall be four and one-half per centum (4½ %). Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than ten dollars ($10).

There shall not be taxed under this title any income received by any—

(a). Labor, agricultural or horticultural organization;

(b). Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c). Cemetery company owned and operated exclusively for the benefit of its members;

(d). Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e). Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f). Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g). Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h). Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i). Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j). Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k). In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; reen. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965.

Amendments

The 1957 amendment substituted "five (5) per centum" for "three (3) per centum" both times it appears in the first paragraph and raised the minimum tax from $5 to $10.

The 1959 amendment, in the first paragraph, substituted the phrase "such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth" each time it appears for the phrases "five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or

from net earnings of resident corporations whose net income is taxable under this title" and "five (5) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock, or from net earnings of resident corporations, joint stock companies or associations whose net income is taxable under this title." The amendment also added what is now the second paragraph with the exception of the last sentence in that paragraph.

The 1961 amendment redesignated with letters subdivisions which had been designated First, Second, etc.; deleted from the exemption paragraph two subdivisions which read "Second. Mutual savings bank not having a capital stock represented by shares;" and "Fourth. Domestic building and loan associations or cooperative bank without capital stock, organized and operated for mutual purposes and without profit;"; and substituted subd. (i) for a subdivision which read:

"Eleventh. Labor, agricultural or horticultural cooperatives organized and operated on a cooperative basis; (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 6 per centum per annum, whichever is greater on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done with the United States, state of Montana or its political subdivisions shall be exempt under this act. Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electricity on a cooperative basis."

The 1965 amendment increased the rate specified in the second paragraph from 5% to 5¼%; and substituted February 28, 1967, for December 31, 1960, in the second paragraph.

Separability Clause

Section 2 of Ch. 264, Laws 1959 read "If any portion, section, subsection, paragraph, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the remainder of the act."

Repealing Clauses

Section 3 of Ch. 232, Laws 1957, Sec. 4 of Ch. 264, Laws 1959, Sec. 3 of Ch. 155, Laws 1961 and Sec. 4 of Ch. 269, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 2 of Ch. 232, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

Section 3 of Ch. 264, Laws 1959 read "This act shall be effective as to all taxable periods ending on or after December 31, 1958, whether on the calendar or fiscal year basis."

Section 2 of Ch. 155, Laws 1961 read "This act shall be in full force and effect as to all taxable periods ending after December 31, 1960, whether on a calendar or fiscal year basis."

Section 2 of Ch. 269, Laws 1965 read "This act shall be effective as to all taxable periods ending on or after February 28, 1965, whether on the calendar or fiscal year basis."

Section 3 of Ch. 269, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Building and Loan Associations

Dividends paid by building and loan associations are deductible from gross in-

come in determining corporation license taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 314.

Church Society Engaged in Agriculture

A corporation described as an international church society which devotes itself to farming, stock growing, and all other branches of agriculture, in which members live communal lives in colonies, which is devoted exclusively to agricultural pursuits for the livelihood of its members, and in which income is used to provide for the needs of its members and for the acquisition of additional property, is not exempt from the corporation license tax on the basis of the exemption granted to corporations organized exclusively for religious purposes or the exemption to corporations exclusively organized for holding title to and collecting income from property, or under the exemption granted to labor, agricultural or horticultural organizations. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

Construction

There is no conflict between this section and section 7-122 and 7-159, since they deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

Cooperative Corporations

Cooperative corporations doing business in Montana and subject to corporation license tax may exclude or deduct from gross income any amounts paid as patronage dividends. Fulton v. Farmers Union Grain Terminal Assn., 140 M 523, 374 P 2d 231, 237.

Interest on United States Obligations

Interest on the obligations of the United States must be included in computing the corporate license tax since the United States is a "resident" within the meaning of the provision fixing the tax at a percentage of the net income received "from all sources within the state." Montana Bank v. Casey, 135 M 104, 337 P 2d 935.

Livestock Production Credit Association

Where "Class A" stock which had been federally owned was retired and control of production credit association passed completely into the hands of individual stockholders, then the association ceased to be an instrumentality of the United States as provided under 12 U.S.C. § 1138c, and became subject to the state corporation license tax. Montana Livestock Production Credit Assn. v. State, 143 M 578, 393 P 2d 50.

References

State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

84-1501.1. Definitions. (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

(1) have more than ten (10) shareholders;

(2) have as a shareholder a person (other than an estate) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

(b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under this act, in effect for such taxable year.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959.

Compiler's Note

A preliminary clause of this act read as follows: "Chapter 15 of Title 84 of the Revised Codes of Montana, 1947, is amended by addition of a new section entitled, 'Election of Certain Small Business Corporations as to Taxable Status' and numbered 84-1501.1, as follows:" Then sections 1 and 2 were set out in the chapter. Section 1 was entitled "Definitions" while section 2 was entitled "Election by Small Business Corporation."

Title of Act

An act relating to the taxation of small business corporations and providing the definition of a small business corporation; and providing for election to be treated as a small business corporation; and providing for the taxation of corporate earnings through personal income tax of the stockholders; and providing for the retention of the minimum corporation license tax; and repealing all acts and parts of acts in conflict herewith.

84-1501.2. Election by small business corporation. (a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation—

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day,

consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then—

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the state board of equalization shall prescribe by regulations.

(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—

(A) within the 90-day period beginning on the day after the date of the enactment of this subchapter, or

(B) if its taxable year ends within such 90-day period, before the close of such taxable year.

An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.

(d) Years for which effective. An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e).

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) on the day on which the election is made, if such election is made after such first day,

becomes a shareholder in such corporation and does not consent to such election within such time as the state board of equalization shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year.

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the state board of equalization shall prescribe by regulations.

(3) Ceases to be small business corporation. An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day,

the corporation ceases to be a small business corporation (as defined in this act). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the state board of equalization consents to such election.

(g) This election shall not be effective unless the corporate net income or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in section 84-4905 Revised Codes of Montana, 1947, as amended.

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars ($10.00) required by section 1501 [84-1501].

History: Sec. 2, Ch. 122, L. 1959.

Compiler's Note

The bracketed reference to 84-1501 was added by the compiler.

Repealing Clause

Section 3 of Ch. 122, Laws 1959 repealed all acts and parts of acts in conflict therewith.

84-1501.3. Small business option unavailable on dissolution—exception. In the case of corporation dissolution no benefits may be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders, unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.

History: En. Sec. 2, Ch. 60, L. 1963.

Effective Date

Section 3 of Ch. 60, Laws 1963 read "This act shall be in effect for taxable years ending on or after December 31, 1962."

84-1502. (*2297*) **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to

be prescribed by the state board of equalization; provided, however, for the purpose of determining depletion, depreciation and obsolescence, in all cases not expressly provided for in this act, the provisions of the most recent act of Congress of the United States, commonly known as the federal income tax act, and the rules, regulations and decisions thereunder, insofar as the same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state board of equalization.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Taxes paid within the year except not to include the following:

(a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income of profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

6. In the case of insurance companies, in addition to the above, the net addition required by law to be made within the year to reserve funds, and paid within the year on policy and annuity contracts.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959.

Amendment

The 1959 amendment in subd. 1 substituted "or incurred during the taxable year" for "within the year"; inserted the words "subject to the limitation hereinafter contained"; added the last sentence to that subdivision and substituted present subd. 5 for the prior one, for text of which see parent volume.

Separability Clause

Section 2 of Ch. 263, Laws 1959 read "If any portion, section, subsection, paragraph, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the remainder of the act."

Repealing Clause

Section 3 of Ch. 263, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 263, Laws 1959 read "The provisions of this act shall apply to all taxable years ending after June 30, 1959."

84-1503. (2297.1) **Segregation of income within and without state.** If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; pro-

vided, however, that the state board of equalization shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The board shall publish not less than once a year, all rules and regulations pertaining to this section. All decisions by the board under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer cannot change from one method of accounting to another method of accounting without first obtaining permission from the board.

History: En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957.

Amendment

The 1957 amendment added the proviso clause to the first sentence and added the second, third and fourth sentences.

Repealing Clause

Section 2 of Ch. 219, Laws 1957 repealed all acts or parts of acts in conflict therewith.

84-1504. (2299) **Computation of license tax—return of net income to be filed.** (1). * * * [Same as parent volume.]

(2) Every corporation, subject to the license fee herein imposed, shall for each year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, render a true and accurate return of its annual net income in the manner and form to be prescribed by the state board of equalization, and containing such facts, data and information as are appropriate and in the opinion of the state board of equalization necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by the president, vice-president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the state board of equalization on or before the fifteenth day of May in each year, and if reporting on a fiscal year basis the return shall be filed with said board on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the board of equalization shall prescribe. The board of equalization may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The term gross income means the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability; but shall include interest exempt from federal income tax. The term "net income" means the gross income of the corporation less the allowable deductions. However, the definitions of gross income and net income set forth in this section shall not be construed as allowing the deductions set forth in section 243 of the Federal Internal Revenue Code as now written, or as that section shall be labeled or amended. The term

"fiscal year" means an accounting period of twelve (12) months ending on the last day of any month other than December.

(3). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1923; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963.

Amendments

The 1961 amendment inserted in subd. (2) the sentence defining "gross income" and the sentence following the definition of "net income".

The 1963 amendment substituted "signed" for "sworn to" in the second sentence of subd. (2); substituted "fifteenth day of May" and "fifteenth day of the fifth month" for "thirty-first day of March" and "last day of the third month" in the third sentence of subd. (2); and inserted the fourth, fifth, and sixth sentences (pertaining to extensions of time for filing returns) in subd. (2).

Effective Dates

Section 2 of Ch. 235, Laws 1961 read "This act shall apply to all taxable years ending after December 31, 1960.

Section 3 of Ch. 235, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 14, 1961.

Cooperative Corporations

Amounts paid as patronage dividends by cooperative corporations doing business in Montana may be excluded or deducted from gross income in computing corporation license tax. Fulton v. Farmers Union Grain Terminal Assn., 140 M 523, 374 P 2d 231, 237.

84-1505. (2300) **Assessment and collection of tax.** (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state board of equalization on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of six per cent (6%) per annum from the due date until paid.

(2) Levy upon and sale of property for payment of corporation licenses taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the board and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against

whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the board a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the board shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

(3) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the board, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963.

Amendments

The 1961 amendment added subdivisions (2) and (3) to the section and designated the former section as subd. (1).

The 1963 amendment completely rewrote subdivision (1). Before the amendment, subdivision (1) read the same as the entire section in the parent volume.

Repealing Clause

Section 3 of Ch. 102, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 102, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 1, 1961.

Limitation on Action of Board

Under this section, the board of equalization is limited to going back no more than five years to recover corporation license taxes alleged to be due. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

84-1507. (2302) **Returns and corrections to be public records.**

Cross-Reference

Certified copies of returns, secs. 84-732 to 84-735.

84-1508. (2303) **Regulations—attendance of witnesses—arbitrary assignment of net income.** The state board of equalization shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state board of equalization, together with the production of books and such other testimony by appropriate process. When the state board of equalization has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the

net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the board shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R. C. M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; amd. Sec. 5, Ch. 186, L. 1963.

Amendment

The 1963 amendment deleted sentences reading, "If the state board of equalization has reason to believe that the amount of any income return is understated, it shall give notice in writing of not less than five (5) days to the corporation making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such corporations may furnish sworn testimony to prove any relevant fact bearing upon said return" and "Upon the determination by the state board of equalization of the amount of tax due from any and all corporations under the provisions of this act, the state board of equalization shall mail a notice of the amount of taxes thus determined to be due to the corporation making such return. Such corporation shall thereupon remit the amount of such tax to the state treasurer."

Effective Date

Section 6 of Ch. 186, Laws 1963 read "This act shall be in effect for taxable years ending on or after June 30, 1963."

Regulations of Board

Since the board of equalization has power, under this section, to prescribe regulations for enforcement of the chapter, a writ of prohibition issued by a district court is improper as a means of reviewing the regulations on the merits. State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

84-1508.1. Determination of tax liability—interest on deficiencies and overpayments. (a) Deficiency assessments. If, the state board of equalization determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state board of equalization a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state board of equalization shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state board of equalization's action upon the protest is final when it mails notice of its action to the taxpayer.

When a deficiency is determined and the tax becomes final, the state board of equalization shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified

in section 84-1505 for payment of the tax. A certificate by the state board of equalization of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

(b) Overpayment of tax—refunds and credits. If the state board of equalization determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

If the state board of equalization disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of the notice, the state board of equalization's action shall become final, unless within the said thirty (30) day period the taxpayer appeals in writing from the action of said board. If such appeal is made, the state board of equalization shall reconsider its action, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented in the event of an oral hearing, the state board of equalization shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar ($1.00).

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963.

Title of Act

An act relating to the corporation license; providing for the determination of corporation license tax liability on deficiencies and overpayments; providing for periods of limitation—waiver; amending section 84-1504, R. C. M. 1947, to provide for an automatic extension; amending section 84-1505, R. C. M. 1947, to provide for computation of tax and return by the taxpayer by the fifteenth day of the fifth month following the close of the taxable period; providing for a ten per cent (10%) penalty; providing six per cent (6%) per annum interest rate; amending section 84-1508, R. C. M. 1947, to delete the procedure for handling tax understatements.

84-1508.2. Periods of limitation—waiver. (1) Except as otherwise provided in section 84-1513, no deficiency shall be assessed or collected

with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on that day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state board of equalization may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963.

84-1511. (2303.3) **Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy.** (1) It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Therefore, every corporation which shall be dissolved or cease to do business in Montana at any time during any year, shall, before such dissolution or cessation of business, make a return and pay the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in section 84-1501, in addition to all other corporation license taxes for which such corporation may then be liable.

History: En. Sec. 7, Ch. 166, L. 1933; amd. Sec. 1, Ch. 67, L. 1943; amd. Sec. 1, Ch. 60, L. 1963.

Amendment

The 1963 amendment substituted "the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in section 84-1501" in subsection (2) for "a corporation license tax in the amount of three per cent (3%) of its total taxable net income (as such income is defined by section 84-1501) during the last year in which it did business in this state"; and deleted from the end of subsection two sentences which read: "Such payment shall be deemed an accelerated payment of an additional tax for the last year in which such corporation did business in Montana, based on its net income up to the time of its dissolution or

cessation of business, and which said income had not theretofore been used in measuring the license tax liability of such corporation. The state board of equalization may grant a reasonable extension of time for filing said return, upon good cause being shown."

Cross-Reference

Clearance certificates, secs. 84-733 to 84-735.

84-1513. (2303.5) **Action in case of false or fraudulent returns.**

Limitation on Action of Board

Under section 84-1505, the board of equalization is limited to going back no more than five years to recover corporation license taxes alleged to be due. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

84-1515. (2303.7) **Reviver of corporation after suspension or forfeiture.** Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state board of equalization showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars ($5.00). In case the application is made in any taxable year other than the taxable year in which the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year in which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars ($5.00) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961.

Amendment

The 1961 amendment at the end of the second sentence inserted the words "for which he shall receive a filing and recording fee of five dollars ($5.00)" and near the end of the third sentence inserted "for which he shall collect a fee of five dollars ($5.00)."

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section 84-1601. Electrical energy producers' license tax.

84-1601. (2343.1) **Electrical energy producers' license tax.** That in addition to the license tax now provided by law, each and every individual, firm, partnership, common law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and herein-

after referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of August, 1957, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and one-quarter per cent (1¼%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957.

Amendment

The 1957 amendment substituted "August, 1957" for "April 1934" and raised the license tax from 1% to 1¼%.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section 84-1801. Definitions.
84-1801.1. Gasoline license tax—amount—evaporation and other loss.
84-1802. Dealers' statements—amount of tax—gasoline tax exemption certificates.
84-1802.1. Payment or credit of gasoline tax in event of change in rate of said tax.
84-1803.1. Enforcement powers of board.
84-1805.1. Records maintained by local governmental agencies issuing exemption certificates.
84-1807. Procedure in case of failure to file statement or pay tax—lien of tax.
84-1809. Invoice of dealers.
84-1812. Distribution and use of proceeds of tax.
84-1813. Tax to be collected on motor fuel, when.
84-1817. Distribution of state highway construction funds.
84-1818. Refund of gasoline license tax—procedure.
84-1818.1. Date of mailing deemed date of filing or receipt—timely mailing bars penalties and tolls—statutory time limitations.
84-1819. Penalty for false statements, unlawfully obtaining refunds, or unlawful use of gasoline tax exemption certificates.
84-1831. Definitions.
84-1832. Tax imposed.
84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
84-1834. Special fuel dealers' and special fuel users' records.
84-1835. Monthly returns and payments.
84-1839. Violations and penalties.
84-1840. Disposition of funds.
84-1842. Temporary permits to unlicensed users of special fuel vehicles—agents by whom issued.
84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms.
84-1844. Penalty for operation without temporary permit—compliance bonds.

84-1801. (2381.11) **Definitions.** As used in this act, the following definitions shall apply:

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion

engines. The term "gasoline" does not include special fuels as defined in section 84-1831 (e).

(2) to (7). * * * [Same as parent volume.]

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

History: En. Sec. 1, Ch. 19, L. 1927; amd. Sec. 1, Ch. 170, L. 1933; amd. Sec. 1, Ch. 116, L. 1935; amd. Sec. 1, Ch. 52, L. 1951; amd. Sec. 1, Ch. 17, L. 1955; amd. Sec. 3, Ch. 70, L. 1963.

Amendment

The 1963 amendment completely rewrote paragraph (1), for previous text of which see parent volume; and inserted in paragraph (8) the words "or any other liquid fuel by whatsoever name such liquid fuel may be known or sold" and the words "including but not limited to any and all such gasoline or liquid fuel."

84-1801.1. Gasoline license tax—amount—evaporation and other loss. Beginning January 16, 1958, every dealer (as defined in section 84-1801 of the Revised Codes of Montana, 1947, and acts amendatory) shall, when engaged in the business of producing, refining, manufacturing or compounding gasoline for sale or use, or importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or use; pay to the state board of equalization, a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to six cents (6¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1(a), 1(b) and subsection 8 of the Revised Codes of Montana, 1947 and acts amendatory) refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In making the computation of license tax due and in making payment thereof, two per cent (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

History: En. Sec. 1, Ch. 230, L. 1957.

Title of Act

An act relating to a license tax for gasoline dealers; providing that such license tax shall be seven cents on each gallon of gasoline sold or distributed; providing for a deduction from such tax for evaporation; providing for an effective date for such tax; repealing the license tax provided in section 10 of chapter 39, Laws of Montana, 1945, as amended; and providing

an effective date of this act; and repealing all acts and parts of acts in conflict herewith.

Repealing Clauses

Section 2 of Ch. 230, Laws 1957 read "The license tax of seven cents (7¢) a gallon of gasoline on dealers or distributors, provided for in section 10 of chapter 39, Laws of Montana, 1945, as amended, shall be repealed from and after January 15, 1958."

Section 3 of Ch. 230, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 230, Laws 1957 provided the act should be in effect from and after January 15, 1958.

84-1802. (2381.12) Dealers' statements—amount of tax—gasoline tax exemption certificates. (1) Each dealer shall, not later than the twenty-fifth (25th) day of each calendar month after this act has become effective, render a true statement to the state board of equalization, duly signed, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state board of equalization of license tax, in an amount equal to the lawful tax per gallon imposed by Section 1, of Chapter 230, the Laws of 1957, and acts amendatory, or such other lawful tax as may be imposed by law for each gallon of gasoline so handled, and upon which such license tax was not paid by any other dealer in this state, for engaging in and carrying on such business in this state. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. The dealer may also deduct for each gallon of gasoline sold by him to any county, incorporated city or town, or school district of this state and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon. In addition a dealer may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid aviation gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501.

Any dealer engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one statement.

(2) Any county, incorporated city or town, or any school district of this state may apply to the state board of equalization for a permit to issue governmental gasoline tax exemption certificates. The application for a permit, the permit itself, and any governmental exemption certificates issued pursuant thereto shall be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee not to exceed five dollars ($5.00) for each permit issued, and may provide that such permit shall be valid for a period not exceeding five (5) years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto and any false statement made by the holder in connection therewith.

So long as any governmental permit remains unrevoked, the holder thereof shall have the privilege to purchase gasoline from any seller with-

out the payment of any part of the license tax, imposed by Section 1, Chapter 230, Laws of 1957, or any acts amendatory thereof, upon surrendering to the seller a governmental gasoline tax exemption certificate certifying that the gasoline is purchased for use directly by the governmental subdivision and not for resale. Any seller who sells gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering the sale, or who sells to another seller who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax on the number of gallons covered by such certificates.

All of the subdivisions of the state of Montana mentioned herein shall be subject to all the conditions, rules and regulations applicable to individuals, and as such subdivisions, can act only by their officer and agents in making application for permits and in issuing governmental gasoline tax exemption certificates, and they shall be responsible for and bound by the acts and declarations of such officers and agents.

(3) Any dealer at an established airport, who purchases aviation gasoline for resale directly to consumers using such gasoline in aircraft, or any consumer who purchases such gasoline in lots of not less than fifty (50) gallons for use in aircraft and not for resale and who purchases from a dealer other than at an established airport, may apply to the state board of equalization for a permit to issue aviation gasoline tax exemption certificates. The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee of not to exceed $5.00 for each permit issued and may provide that said permits shall be valid for a period not exceeding five years. No permit shall be transferable. The permit shall be subject to revocation at any time by the board for any violation of law relating thereto or any false statement made by the holder in connection therewith.

So long as his permit remains unrevoked, the holder thereof shall have the privilege to purchase aviation gasoline from any dealer without the payment of any part of the license tax, imposed by this section, except the part allocated to the state aeronautics commission upon surrendering to the seller an aviation gasoline tax exemption certificate certifying, if the holder is a dealer at an established airport, that the gasoline purchased will be resold only to consumers for use directly in aircraft, and if the holder is a consumer purchasing from a dealer other than at an established airport and the purchase is fifty (50) gallons or more, that the gasoline is purchased for use directly in aircraft and not for resale; and any dealer who sells aviation gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering that sale, or who sells to another dealer who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax, on the number of gallons covered by such certificates, except the portion thereof allocated to the state aeronautics commission; but notwithstanding any other pro-

vision to the contrary, no tax exemption certificate shall be valid for any purpose nor entitle any dealer to the deduction authorized in subsection (1) of this section unless submitted to the board prior to the end of the second calendar month immediately succeeding the month in which the sale was made with respect to which such certificate issued.

History: En. Sec. 3, Ch. 19, L. 1927; amd. Sec. 4, Ch. 92, L. 1929; amd. Sec. 4, Ch. 6, L. 1931; amd. Sec. 1, Ch. 202, L. 1949; amd. Sec. 1, Ch. 217, L. 1953; amd. Sec. 2, Ch. 17, L. 1955; amd. Sec. 1, Ch. 64, L. 1963; amd. Sec. 4, Ch. 70, L. 1963; amd. Sec. 214, Ch. 147, L. 1963.

Compiler's Note

This section was amended three times in 1963, once by Ch. 64, once by Ch. 70, and once by Ch. 147. None of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all three amendments.

Amendments

Chapter 64, Laws 1963 substituted the reference in subsection (1) to section 1, Chapter 230, Laws of 1957 for a reference to section 10, Chapter 39, Laws of 1945; inserted the third sentence in subsection (1); inserted a new subsection (2); and redesignated former subsection (2) as (3).

Chapter 70, Laws 1963, deleted the words "and sworn to" which followed "duly signed" near the beginning of subsection (1); and made minor changes in phraseology and punctuation.

Chapter 147, Laws 1963, substituted "state aeronautics commission" for "state aviation fund" near the end of the first paragraph of subsection (1) and two places in the second paragraph of former subsection (2) (now subsection (3)).

84-1802.1. Payment or credit of gasoline tax in event of change in rate of said tax. In the event of an increase in the rate of tax imposed by the state of Montana upon gasoline, each dealer shall pay over to the board of equalization, in the manner herein provided, such additional amount of tax upon all gasoline in storage or in transit on the date of such increase in the rate of tax upon gasoline. In the event of a decrease in the rate of tax imposed upon gasoline, each dealer who shall have previously paid the greater tax shall be entitled to a credit or setoff for the amount of such differential in the rate of tax on gasoline in storage or in transit on the date of such decrease in the rate of tax. Said payment of tax or credit and setoff of tax shall be transmitted to the board of equalization within forty-five (45) days of such increase or decrease in the rate of tax upon gasoline, and shall be accompanied by an affidavit of said dealer containing a true and correct inventory of gasoline in storage or in transit on the date of increase or decrease in the rate of tax imposed on gasoline, except that a credit or setoff of tax shall be allowed in the manner provided herein on gasoline in storage or in transit on January 16, 1958, if the same be filed with the board of equalization within forty-five (45) days from and after the effective date of this act. The state board of equalization shall have the power to audit the records necessary to determine the validity of any claim.

History: En. 84-1802.1 by Sec. 1, Ch. 175, L. 1959.

Title of Act

An act to amend Chapter 18, Title 84 of the Revised Codes of Montana, 1947, by adding thereto a new section to be numbered 84-1802.1, and providing for the payment or the credit and setoff of the tax upon gasoline in storage on the date of increase or decrease in the rate of tax imposed on gasoline, providing that power to determine the validity of such claims shall rest in the state board of equalization; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 175, Laws 1959 repealed all acts and parts of acts in conflict therewith.

84-1803.1. Enforcement powers of board. (a) Rules and regulations: The board shall enforce the provisions of this act, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof. (b) Examination of records: The board, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline dealer or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the board for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

History: En. Sec. 2, Ch. 70, L. 1963.

Compiler's Note

The title to Chapter 70, Laws of 1963, indicates that this section is intended to apply to Chapter 18 of Title 84, R. C. M. 1947. However, the body of the act does not specifically so indicate. The title to Chapter 70, Laws of 1963, read as follows: "An act providing that under Chapter 18 of Title 84, R. C. M. 1947, the date of mailing is deemed the date of filing of reports, notices, payments or claims for refunds; providing that the state board of equalization establish rules and regulations and authorizing the state board of equalization to examine records of gasoline dealers."

84-1805.1. Records maintained by local governmental agencies issuing exemption certificates. Each county, incorporated city or town, or school district of this state which is the holder of a permit to issue governmental gasoline tax exemption certificates, shall keep a record in such form as the state board of equalization shall require, showing the total number of gallons of gasoline purchased by the permit holder and such other information as the state board of equalization may require.

History: En. Sec. 2, Ch. 64, L. 1963.

84-1807. (2381.17) Procedure in case of failure to file statement or pay tax—lien of tax. If any dealer or other person subject to the payment of such license tax shall fail, neglect, or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent dealer and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for non-payment

of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes due from any dealer under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such dealer or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the dealer to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid taxes, penalty and interest.

History: En. Sec. 8, Ch. 19, L. 1927; amd. Sec. 1, Ch. 175, L. 1929; amd. Sec. 5, Ch. 70, L. 1963.

Amendment

The 1963 amendment substituted "judgment liens" for "other liens" near the end of the fifth sentence; and made a minor change in punctuation.

84-1809. (2381.19) **Invoice of dealers.** Each dealer in this state handling any gasoline as defined in this act, shall, at the time of such handling, make out and deliver to the purchaser or consignee thereof an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state board of equalization may require.

History: En. Sec. 10, Ch. 19, L. 1927; amd. Sec. 6, Ch. 70, L. 1963.

Amendment

The 1963 amendment substituted "such other information as the state board of equalization may require" at the end of the section for "that the license tax on same has been paid or will be paid to the treasurer of the state of Montana within fifteen (15) days after the current month, as provided in this act."

84-1812. (2381.22) **Distribution and use of proceeds of tax.** One per cent (1 %) of all money received in payment of license taxes under the provisions of this act shall be deposited in the state park account in the

earmarked revenue fund. All other money received, except that amount paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended by the state highway commission on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana; provided, that the total cost to the state for administration, dissemination of public information, and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 84-1817; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed. The legislative assembly hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than one per centum (1%) is used for propelling boats on waterways of this state.

History: En. Sec. 13, Ch. 19, L. 1927; amd. Sec. 1, Ch. 178, L. 1929; amd. Sec. 1, Ch. 231, L. 1953; amd. Sec. 1, Ch. 206, L. 1957; amd. Sec. 1, Ch. 42 L. 1961; amd. Sec. 5, Ch. 126, L. 1963; amd. Sec. 7, Ch. 69, L. 1965; amd. Sec. 1, Ch. 248, L. 1965.

Compiler's Note

This section was amended twice in 1963, once by Ch. 126 and once by Ch. 223. Both 1965 amendatory acts adopted the amendments made by Ch. 126 and repealed Ch. 223, Laws 1963, but incorporated in substance the principal amendments made by Ch. 223.

The section was also amended twice in 1965, once by Ch. 69 and once by Ch. 248. However, Ch. 248 incorporated the changes made by Ch. 69, so the compiler has used the text of Ch. 248 as the basis for the above section.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

Amendments

The 1957 amendment substituted "an annual expenditure of eighty-five thousand dollars ($85,000.00)" in the proviso (since deleted by Ch. 248, Laws 1965) relating to expenditures for dissemination of public information for "three and one-half per cent (3½%) not to exceed an annual expenditure of sixty-five thousand dollars ($65,000.00) of the above mentioned administrative fund"; and deleted a further proviso reading, "provided, however, that said expenditures for the dissemination of public information shall terminate June 30, 1955."

The 1961 amendment inserted "notwithstanding the proportions hereinbefore set

out" in the final sentence of the paragraph (later deleted by the 1963 amendment) relating to refunds and drawbacks; deleted "in the construction, etc." or "for the purpose of construction, reconstruction, betterment, maintenance, administration, dissemination of public information hereby determined to be a proper administrative expense and engineering" before "on the federal highway system," before "on highways leading from each county seat," and before "on such other roads," all in the language now found in the second sentence; inserted the words "pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Monanta" now found in the second sentence; increased the maximum allowed for dissemination of public information from $85,000 to $126,500; added the sentences now constituting the final two sentences of the first paragraph; and made numerous minor changes in phraseology and punctuation.

The 1963 amendment deleted former first and second paragraphs which read, "All money received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited and credited as follows: seventy-five per centum (75%) of the total amount collected to the state highway fund, and twenty-five per centum (25%) of the total amount collected to a special fund designated as 'the gasoline license drawback fund.'

"The amount deposited in the gasoline tax drawback fund shall be used for the purpose of making refunds and paying drawbacks as authorized by law to be made or paid to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state. At the close of each fiscal year, the state treasurer shall transfer all money remaining unexpended in said gasoline license tax drawback fund to the state highway fund. In the event, however, the money in said gasoline license tax drawback fund is insufficient in amount at any time to pay duly authorized and approved refunds or drawbacks, the state treasurer notwithstanding the proportions hereinbefore set out shall transfer from the state highway fund a sum or sums sufficient in amount to meet and pay all such outstanding authorized and duly approved refunds or drawbacks"; substituted "All money received by the state treasurer in payment of license taxes under the provisions of this act except that amount paid out of the state board of equalization's suspense account for gasoline tax refund" for "All money transferred to the state highway fund" at the point corresponding to the beginning of the present second sentence; deleted "which said eight per centum (8%) shall be known as the administrative fund" from the end of the proviso limiting the total cost of administration, dissemination of public information, and engineering; and deleted the words "out of said administrative fund" which had been inserted by the 1961 amendment after "public information" in the proviso relating to expenditures for dissemination of public information.

Chapter 69, Laws 1965, adopted the changes made by Chapter 126, Laws 1963; inserted a new first sentence; substituted "All other money received" at the beginning of the second sentence for "All money received by the state treasurer in payment of license taxes under the provisions of this act"; and added the second paragraph containing provisions which had been inserted in substance by Chapter 223, Laws 1963.

Chapter 248, Laws 1965, incorporated the changes made by Ch. 69 and also deleted a former second sentence reading, "Provided further that the expenditure for dissemination of public information shall not exceed an annual expenditure of one hundred twenty-six thousand five hundred dollars ($126,500.00)."

Repealing Clauses

Section 2 of Ch. 42, Laws 1961 read "That section 84-1816 of the Revised Codes of Montana, 1947, be, and the same is hereby repealed."

Section 3 of Ch. 42, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Section 8 of Ch. 69, Laws 1965 read "Section 1, Chapter 223, Laws of 1963, compiled as section 84-1812(2) R. C. M. 1947, is repealed."

84-1813. (2381.23) **Tax to be collected on motor fuel, when.** The state board of equalization shall, under the provisions of rules and regulations issued by said board, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to nine cents (9¢) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana,

or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivision.

History: En. Sec. 2, Ch. 116, L. 1935; amd. Sec. 1, Ch. 210, L. 1955; amd. Sec. 1, Ch. 73, L. 1963.

Amendment

The 1963 amendment inserted "or cause to be collected" near the beginning of the section; and added to the end of the section the clauses beginning "or used in motor vehicles, motorized equipment and the internal combustion."

84-1815. (2396.1) **Repealed.**

Repeal

This section (Sec. 1, Ch. 18, L. 1927), relating to districts for distribution of highway funds, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

84-1816. (2396.2) **Repealed.**

Repeal

This section (Sec. 2, Ch. 18, L. 1927; Sec. 1, Ch. 74, L. 1945; Sec. 1, Ch. 264, L. 1947; Sec. 1, Ch. 212, L. 1953; Sec. 1, Ch. 241, L. 1953; Sec. 1, Ch. 88, L. 1955; Sec. 2, Ch. 206, L. 1957), relating to use of state highway funds on the federal highway system, was repealed by Sec. 2, Ch. 42, Laws 1961.

84-1817. (2396.3) **Distribution of state highway construction funds.** (1) Allotment of state construction funds for federal aid highway systems. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, the state highway commission shall allot available state construction moneys to the federal aid interstate highway system, the federal aid primary highway system, the federal aid secondary highway system and the federal aid urban highway system in proportion to the amounts necessary to match the respective amounts of federal aid available for expenditure on these systems at the beginning of each fiscal year.

(2) Apportionment of state construction moneys to the federal aid primary highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, the state highway commission shall compute from its records the percentage of incompleted mileage of the federal aid primary highway system within each of said districts which each district respectively bears to the total incompleted mileage of said federal aid primary highway system within this state at that time, and the actual respective percentages of incompleted mileage in each district as so computed and determined at the beginning of each fiscal year shall be used in apportioning construction moneys for that year to each of the said financial districts from the state highway fund as defined and provided by section 84-1816. As a basis for the determination of the amount of incompleted mileage of said federal aid primary highway system in this state for each fiscal year, the state highway commission shall adopt as the criterion the current definition, as prescribed by the bureau of public roads, for a fully and adequately completed federal

highway in this state. This criterion shall be considered as a one hundred per cent (100%) completed federal highway; and federal highway mileage which is only partially completed under the application of this criterion, shall be considered as only partially completed on a percentage basis, this to be determined from the relative estimated percentage costs of construction already performed and of additional construction which must be performed to bring said mileage up to the standard of said criterion.

(3) Apportionment of state construction moneys to the federal aid secondary highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid secondary highway system shall be apportioned to each of the financial districts as defined in section 84-1815, on a percentage basis as determined in the following manner: One-fourth (¼) in the ratio of land area in each financial district to the total land area in the state; one-fourth (¼) in the ratio of the rural population in each financial district to the total rural population in the state; and one-fourth (¼) in the ratio of the rural road mileage in each financial district to the total rural road mileage in the state; one-fourth (¼) in the ratio of value of rural lands in each financial district to the total value of rural land in the state. Said moneys to be further apportioned to the counties within each financial district in the same ratio of land area, rural population and rural road mileage; and value of rural lands, provided, that to the extent necessary to permit orderly programming and construction of projects, expenditures of construction money in any county may exceed the amount apportioned to that county with the provision that such excess expenditure shall not exceed three (3) times the amount of the last annual apportionment to that county and that any excess expenditures shall be deducted from future apportionments to that county.

For the purposes of this section, rural population is defined as total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the federal census. Decennial census figures for population shall be adjusted during the interim between censuses in accordance with the percentage of change occurring in annual motor vehicle registration figures for each county.

For the purposes of this section, rural road mileage is defined as all road mileage outside incorporated cities, exclusive of road mileage on the federal aid rural primary highway system. Rural road mileage figures reported by the road inventory of the state highway commission shall be used in determining rural road mileage as defined in this section.

For the purposes of this section, the value of rural lands, shall include the value of state owned lands from which the state derives grazing, timber and agricultural income.

The basis for the value of rural lands shall be computed from the figures in the latest biennial report of the Montana state board of equalization. The basis for the value of state owned lands shall be computed from the latest figures on the total grazing, timber and agricultural lands in each county, submitted by the commissioner of state lands and investments in

his latest biennial report. The average value of privately owned lands shall be the average value of the state owned lands, if the actual values are not available.

(4) Apportionment of state construction moneys to the federal aid urban highway system. At the start of the fiscal year beginning July 1, 1953, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid urban highway system shall be apportioned to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in the state for all cities over five thousand (5,000) population.

For the purpose of this section, urban population is defined as population within the incorporated limits of cities over five thousand (5,000) population and also the population within unincorporated urban fringe areas as delineated and reported in the federal census.

To the extent necessary to permit orderly programming and construction of projects, expenditures of construction money in any urban city may exceed the amount apportioned to that city with the provision that such excess expenditures shall be deducted from future apportionments to that city.

(5) Apportionment of state construction moneys to the federal aid interstate highway system. At the start of the fiscal year beginning July 1, 1957, and at the beginning of each fiscal year thereafter, state construction moneys for the federal aid interstate highway system shall be apportioned to each of the financial districts, as defined in section 84-1815, Revised Codes of Montana, 1947, in proportion to the estimated cost of constructing or reconstructing the system in each district as compared with the total estimated cost of constructing or reconstructing the entire system within the state. The cost estimates to be used for apportioning said state construction funds shall be those costs developed by the state highway commission in accordance with the provisions of subsection (d) of section 108 of title I of the federal aid highway act of 1956.

(6) The state highway commission may vary the expenditures made in any financial district under the provisions of this act to the extent of fifteen per cent (15%) above the amount of money allocated to such district in any year for the federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system, provided that the allocation of construction money to such district for the next succeeding fiscal year shall be decreased by an amount equal to such increased expenditures.

(7) The state highway commission may transfer a maximum of twenty per cent (20%) of the state funds available for the primary system in any financial district to the secondary system in that same financial district. Provided, that such transfer is limited to a route that possesses the characteristics for a rural arterial and only when the state highway commission has obtained approval from the bureau of public

roads to transfer matching federal primary funds to such route according to the provisions of the federal highway act.

History: En. Sec. 3, Ch. 18, L. 1927; amd. Sec. 1, Ch. 102, L. 1937; amd. Sec. 1, Ch. 213, L. 1939; amd. Sec. 1, Ch. 175, L. 1943; amd. Sec. 1, Ch. 87, L. 1945; amd. Sec. 1, Ch. 240, L. 1953; amd. Sec. 1, Ch. 113, L. 1957; amd. Sec. 1, Ch. 133, L. 1959; amd. Sec. 1, Ch. 113, L. 1965.

Compiler's Note

Section 84-1816, referred to in subd. (2), was repealed by Sec. 2, Ch. 42, Laws 1961.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

Amendments

The 1957 amendment in subd. (1) substituted "July 1, 1957" for "July 1, 1953," inserted the words "the federal aid interstate highway system" and substituted the words "available for expenditure on these systems at the beginning of each fiscal year" for the words "apportioned to these systems" which appeared at the end of said subd. (1); added a new subd. (5); renumbered former subd. (5) as subd. (6) and in subd. 6 inserted the words "for the federal aid primary highway system or the federal aid secondary highway system, and to the extent of one hundred per cent (100%) above the amount of money allocated to such district in any year for the federal aid interstate highway system."

The 1959 amendment added the fourth and fifth paragraphs to subd. (3) and in the third paragraph of subd. (4) deleted the words "expenditures of construction of projects" which appeared after the word "projects."

The 1965 amendment added subd. (7).

Repealing Clauses

Section 2 of Ch. 113, Laws 1957 and Sec. 2 of Ch. 133, Laws 1959 repealed all acts and parts of acts in conflict therewith.

84-1818. (2396.4) **Refund of gasoline license tax—procedure.** (1) Any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be exempt from the payment of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town and such exemption from payment of tax shall be allowed at the time of sale when purchaser furnishes to the seller a valid exemption certificate on a form approved by the state board of equalization; provided, that such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of

such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within twelve (12) months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have one hundred twenty (120) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is willfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

(4) Any person desiring to claim refund on gasoline purchased shall obtain from the state board of equalization a permit by application therefor, on such form as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

A fee of one dollar ($1.00) shall be collected from each person to whom a refund permit is issued after July 1, 1953. No refund shall be paid to any person after July 1, 1953, unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five years from the date of issuance.

(6) Whenever a claim shall be rejected, as herein provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

(7) When gasoline is sold and delivered to a person who shall claim to be entitled to a refund with respect to the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale and delivery separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in words and figures and the date of such purchase, and whether an aviation gasoline tax exemption certificate has been issued with respect to such sale, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase, and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued; provided, however, that in case the separate invoice delivered to the purchaser at the time of sale be either lost or destroyed he may make claim to the board of equalization for such refund, supporting the same by affidavit reciting the circumstances of such loss or destruction and produce such other evidence as may be required by the board including an actual duplicate carbon copy of the original invoice or invoices. If the board be satisfied as to the sufficiency of the claim and supporting evidence, proper refund shall be made six (6) months thereafter. Except where surrendered to the purchaser for such purpose, the seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. The seller shall, in filling out invoices, use double-faced carbons.

(8) Upon the effective date of this act, each seller of such gasoline upon which a refund may be claimed by the purchaser, shall obtain a permit from the state board of equalization to sell such gasoline upon application therefor to the board, upon such form as the board shall prescribe, which application shall be made under oath and shall contain among other things, the name and address of the applicant, the place or places of his or its business within the state of Montana. Such permit issued shall bear a permit number and the date of issuance. It shall be the duty of the state board of equalization to keep a record of all such permits issued to sellers, and the suspension or cancellation of any thereof. Such permits shall be issued for the calendar year upon payment of a fee of one dollar ($1.00). Such permit must be renewed annually on or before the first day of January, 1956, and each year thereafter, upon such application and fee paid. After the effective date of this act, it shall be unlawful for any person, firm, corporation or association to sell such gasoline upon which a refund may be claimed without a valid permit therefor. If any such person, firm, corporation or association shall sell any such gasoline

without being the holder of a valid permit therefor, he shall be punished by a fine of not less than twenty-five dollars ($25.00), or more than two hundred dollars ($200.00), or be imprisoned in the county jail for a period of not less than ten days (10) nor more than sixty (60) days, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 17, L. 1927; amd. Sec. 1, Ch. 168, L. 1929; amd. Sec. 1, Ch. 175, L. 1931; amd. Sec. 1, Ch. 96, L. 1937; amd. Sec. 1, Ch. 67, L. 1939; amd. Sec. 1, Ch. 130, L. 1947; amd. Sec. 1, Ch. 168, L. 1949; amd. Sec. 1, Ch. 198, L. 1949; amd. Sec. 1, Ch. 221, L. 1953; amd. Sec. 3, Ch. 17, L. 1955; amd. Sec. 1, Ch. 212, L. 1955; amd. Sec. 1, Ch. 17, L. 1963; amd. Sec. 3, Ch. 64, L. 1963; amd. Sec. 6, Ch. 126, L. 1963; amd. Sec. 1, Ch. 224, L. 1963.

Compiler's Note

This section was amended four times in 1963, by Ch. 17, by Ch. 64, by Ch. 126, and by Ch. 224. Chapter 224 incorporated the change made by Ch. 17; but, except for this, none of the amendatory acts mentioned nor included the changes made by any of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating all four amendments.

Amendments

Chapter 17, Laws 1963, extended the filing period provided by the first sentence of subd. (2) from eight to twelve months.

Chapter 64, Laws 1963, substituted "exempt from the payment" for "entitled to said refund or drawback" before "of said tax" in the first proviso in subsection (1) (pertaining to counties, etc.); added at the end of said proviso the words "and such exemption from payment of tax shall be allowed at the time of sale when purchaser furnishes to the seller a valid exemption certificate on a form approved by the state board of equalization"; deleted a former subsection (7), for text of which see parent volume; and redesignated former subsections (8) and (9), respectively, as (7) and (8).

Chapter 126, Laws 1963, deleted "and the state board of examiners" after "approved by said board" in the third sentence of subsection (2); substituted "a warrant shall be drawn" for "the state auditor shall draw his warrant" in the third sentence of subsection (2); deleted "out of the gasoline license tax drawback fund" after "shall be paid" in the third sentence of subsection (2); and deleted "after approval by the state board of examiners, as above provided" after "warrant shall issue" in the first sentence of subsection (3).

Chapter 224, Laws 1963, deleted "motor boats" which preceded "aeroplanes or aircraft" in subsection (1); and repeated the amendment made by Ch. 17, Laws 1963.

Gasoline Lost—Refund

Since there has been no amendment to this law expressing disapproval of an earlier supreme court decision that gasoline lost or destroyed should be included in the provision for a refund of the tax paid, the legislature in effect approved the interpretation. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

Where gasoline was lost during a flood which tipped over storage tank, the purchaser was entitled to a refund of the tax paid. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

Where it has been decided that a claimant is entitled to a refund but the claim is such that it cannot be regularly itemized on prescribed forms, the board cannot set up the failure to comply with technical regulations as a reason for denying the claim. State ex rel. Roeder v. State Board of Equalization, 133 M 393, 324 P 2d 1057, 1061.

84-1818.1. Date of mailing deemed date of filing or receipt—timely mailing bars penalties and tolls—statutory time limitations. When any application, report, notice, payment or claim for credit or refund to be filed with or made to any officer, agent, or employee of the state under the provisions of this chapter has been deposited in the United States mail, addressed to such officer, agent or employee, it shall be deemed filed or received on the date shown by the postoffice cancellation mark on the envelope containing it, or on the date it was mailed, if proved to the satisfaction of said officer, agent or employee of the state, establishes that the actual mailing occurred on an earlier date; provided, however, that no penalty for delinquency shall attach, nor will the statutory period

be deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that such application, report, notice, payment, or claim for credit or refund was timely deposited in the United States mail, properly addressed to said officer, agent, or employee of the state, even though never received, if a duplicate of such document or payment is filed.

History: En. Sec. 1, Ch. 70, L. 1963.

Compiler's Note

The title to Chapter 70, Laws of 1963, indicates that this section is intended to apply to Chapter 18 of Title 84, R. C. M. 1947. However, the body of the act does not specifically so indicate. For the title to Chapter 70, Laws of 1963, see Compiler's Note under section 84-1803.1.

84-1819. (2396.5) **Penalty for false statements, unlawfully obtaining refunds, or unlawful use of gasoline tax exemption certificates.** Any person

(a) who shall make any false statement in connection with the application for such refund or who shall collect or cause to be repaid to him, or to any other person, any such refund without being entitled to the same under the provisions of this act, or

(b) who shall make any false statement in any application for a permit to issue governmental gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any gasoline for which such a certificate has been issued otherwise than for the purposes and business of said governmental subdivision, or who shall collect any part of the tax in connection with a sale covered by a valid certificate, or

(c) who shall make any false statement in any application for a permit to issue aviation gasoline tax exemption certificates or in any such certificate issued by him, or who shall use any aviation gasoline for which such a certificate has been issued otherwise than in aircraft or who shall collect that part of the tax, not allocated to the state aeronautics commission, in connection with a sale covered by a valid certificate shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed the sum of one thousand dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 17, L. 1927; amd. Sec. 4, Ch. 17, L. 1955; amd. Sec. 4, Ch. 64, L. 1963; amd. Sec. 221, Ch. 147, L. 1963.

Compiler's Note

This section was amended twice in 1963, by Ch. 64 and by Ch. 147. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 64, Laws 1963, inserted a new paragraph (b) and redesignated former paragraph (b) as (c).

Chapter 147, Laws 1963, substituted "state aeronautics commission" for "state aviation fund" in former subsection (b) (now (c)).

Separability Clause

Section 5 of Ch. 64, Laws 1963 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not effect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

84-1831. Definitions. As used in this act, the following definitions shall apply:

(a) and (b). * * * [Same as parent volume.]

(c) As used in this act, "public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

(d) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(e) "Special fuel" means those combustible gases and liquids commonly referred to as liquid petroleum gases and also diesel fuel or any other volatile liquid of less than forty-six degrees (46°) A. P. I. (American Petroleum Institute) gravity test, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(f) and (g). * * * [Same as parent volume.]

(h) "Special fuel user" means any person other than a county, incorporated city or town or school district of this state, who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(i). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959, amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965.

Compilers Notes

This section was amended twice in 1963, once by Ch. 66 and once by Ch. 70. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Chapter 197, Laws of 1965 added "or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof" at the end of paragraph (c). However, since the amendment does not become effective until December 31, 1966, the compiler has made no change in the above text.

Amendments

The 1959 amendment substituted present subd. (c) for one that read: "'Highway' means every way or place generally open to the use of the public for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair or reconstruction."

Chapter 66, Laws 1963, inserted the words "other than a county, incorporated city or town or school district of this state" in subd. (h).

Chapter 70, Laws 1963, completely rewrote paragraph (e), for previous text of which see parent volume.

The 1965 amendment added words to paragraph (c), effective December 31, 1966. See Compiler's Notes above.

84-1832. Tax imposed. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1813, or on liquid petroleum gases under section 84-1802. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel

dealer from the special fuel user and shall be paid over to the board as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the board by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963.

Amendment

The 1963 amendment added the last sentence.

Effective Date

Section 3 of Ch. 66, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 25, 1963.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits. (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncancelled fuel dealers' license issued to him by the board.

Every special fuel user shall obtain from the board, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any member of the state board of equalization or any authorized employee of said board, or any other law enforcement officer.

(b) and (c). * * * [Same as parent volume.]

(d) Bond: No special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the board may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as said board may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five hundred dollars ($500.00), for a special fuel user and not less than one thousand dollars ($1,000.00) for a special fuel dealer.

(e) to (g). * * * [Same as parent volume.]

(h) Revocation, suspension, cancellation and surrender of license and permit: The board may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the board shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the board, requiring

him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the board may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the board of any such license or permit, the holder thereof shall immediately surrender the same to the board for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the board for cancellation.

The board shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i). * * * [Same as parent volume.]

(j) Additional bond or deposit: The board may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 2 (i) [84-1831 (i)], if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the board, said board forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state board of equalization of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed by said board in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963.

Amendments

The 1957 amendment in subd. (a) deleted a former second sentence which read "Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, it shall be unlawful for any person to consume special fuel for the propulsion of a motor vehicle upon the highways of this state unless such person is the holder of an uncancelled fuel user's license issued to him by the board" and substituted the present second paragraph for one which read "Every special fuel user shall obtain prior to the use of special fuel for the propulsion of a motor vehicle or vehicles, in this state, a special fuel vehicle permit for such vehicle or vehicles operated by him upon the highways as herein defined"; in subd. (h) inserted in the caption to said subdivision the word "suspension" and deleted the reference to "bond"; in the first sentence substituted the word "any" for "a" and in the second sentence substituted the words "of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of

the board, requiring him to appear before the board on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them," for the words "to show cause within thirty (30) days of the date of the notice why the license or permit" and added the second paragraph; in subd. (j) substituted the word "its" for "his" appearing before the word "opinion" and changed spelling of the word "therefor" to "theretofore."

The 1963 amendment increased the special fuel dealer's bond by adding "for a special fuel user and not less than one thousand dollars ($1,000.00) for a special fuel dealer" at the end of subsection (d); and added subsection (k).

84-1834. Special fuel dealers' and special fuel users' records. (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the board may require, and shall produce them for the inspection of the board at any time during the business hours of the day.

(b) Retention of records: Said records, receipts, invoices and other pertinent papers shall be required to be kept for a period of at least five (5) years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957.

Amendment

The 1957 amendment inserted the words "and inspection of" to the heading of subd. (a) and substituted the words "and shall produce them for the inspection of the board at any time during the business hours of the day" for a former last sentence of subd. (a) which read "The records, receipts, invoices and other pertinent papers shall be available at all times during the business hours of the day, to the board" and in subd. (b) substituted the word "on" for the word "of."

84-1835. Monthly returns and payments. (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the board, on forms prescribed by said board, a monthly tax return. Such return shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification. The return shall show such information as the board may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the board need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the board may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports

shall be considered filed or received on the date or as provided in this chapter.

(b) to (i). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963.

Amendment

The 1963 amendment substituted "date or as provided in this chapter" for "date shown as received by the board" at the end of subsection (a).

Effective Date

Section 10 of Ch. 70, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 25, 1963.

84-1839. Violations and penalties. (a) Penalties and remedies: Any person violating any provision of this act is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one hundred dollars ($100.00) nor more than two thousand dollars ($2,000.00) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

(b) Penalties are cumulative: The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this act.

History: En. Sec. 10, Ch. 162, L. 1955; amd. Sec. 3, Ch. 216, L. 1957.

Amendment

The 1957 amendment deleted former subd. (a) for text of which see parent volume, relettered former (b) to (a) and (c) to (b), and in subd. (a) substituted the word "act" for the word "section."

Repealing Clause

Section 4 of Ch. 216, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-1840. Disposition of funds. All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the state highway department.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund to the credit of the state highway department" for "to the credit of the state highway fund."

84-1842. Temporary permits to unlicensed users of special fuel vehicles —agents by whom issued. A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the board of equalization may prescribe by order, rule or regulation.

History: En. Sec. 1, Ch. 200, L. 1961.

Title of Act

An act to provide for issuing temporary permits to unlicensed special fuel users of all special fuel vehicles; to provide that said permits shall be issued for a minimum fee of twenty dollars ($20.00) and shall be valid for a period of time not to exceed seventy-two (72) hours; to provide for a method of collection and disposal of said fees; to provide that the state board of equalization shall furnish said permits and forms and generally enforce this act; and providing a penalty.

84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms. The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars ($20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state board of equalization. Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state board of equalization.

History: En. Sec. 2, Ch. 200, L. 1961.

84-1844. Penalty for operation without temporary permit—compliance bonds. Any unlicensed user of special fuel vehicles operating within the state of Montana, without making application for said temporary permit, and paying the specified fee, shall be guilty of committing a misdemeanor and upon conviction, be fined fifty dollars ($50.00). Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the state board of equalization and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961.

CHAPTER 19—LICENSE AND OTHER TAX PROCEEDS—HOW DISPOSED OF

Section 84-1901. Disposition of moneys from certain designated license and other taxes.

84-1901. Disposition of moneys from certain designated license and other taxes. The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of automobile drivers' license fees under section 174.11 [1741.11], electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes under chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inclusive, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy per centum (70%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining twenty-five per centum (25%) of the proceeds of the corporation license tax and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana in order to comply with the provisions of section 1a of article XII of the constitution of the state of Montana; and the state

treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana beer act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the state liquor control act, being sections 4-101 to 4-237, inclusive.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965.

Compiler's Note

The compiler has inserted the bracketed section number 1741.11.

Amendments

The 1963 amendment deleted the words "on and after July 1, 1941" after "moneys received by him" in two places; substituted "earmarked revenue fund for state equalization aid to the public schools of Montana" for "common school equalization fund"; and deleted a proviso which read, "provided, however, that the crediting of such moneys to such common school equalization fund shall have no relation to nor in any manner affect any appropriation made by any legislative assembly for such fund and shall not in any manner limit or restrict any such appropriation unless the amount so credited to such fund from such income tax collections in any one fiscal year shall equal or exceed the budget request for appropriation for such fund for such fiscal year."

The 1965 amendment divided the section into two sentences; reduced the portion of income tax and corporation license tax proceeds specified in the latter part of the first sentence from 75% to 70%; added "subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds" at the end of the first sentence; substituted the reference to section 174.11, apparently by typographical error, for a reference to section 1741.11, near the beginning of the first sentence; substituted "of the proceeds of the corporation license tax and income tax" for "thereof" near the beginning of the second sentence; and made minor changes in phraseology and punctuation.

Cross-Reference

Income tax and corporation license tax proceeds pledged to sinking fund for long-range building program bonds, sec. 79-2203.

CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

Section 84-2004. Amount of tax.
84-2006. Computation and notice of tax.
84-2007. Delinquent taxes—penalty.

84-2004. (2344.4) **Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, shall be one dollar, together with an additional sum or amount computed on the gross value of product which may have been derived by [such person from] such business, work or operation within this state during the calendar year immediately preceding, at the following rates one-half of one per cent (½ of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars ($100,000) and does not exceed two hundred and fifty thousand dollars ($250,000); three-fourths of one per cent (¾ of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars ($250,000) and does not exceed four hundred thousand dollars ($400,000); one per cent (1%) of the amount by which the gross value of product exceeds four hundred thousand dollars ($400,000) and does not exceed five hundred thousand dollars ($500,000) and one and

one-fourth per cent (1¼%) of the amount by which the gross value of product exceeds five hundred thousand dollars ($500,000).

History: En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959.

Compiler's Note

The bracketed words "such person from" were inserted by the compiler. The words were in the section prior to the 1959 amendment, but were omitted from the 1959 act, apparently through a typographical error. Hence they were inserted in brackets by the compiler.

Amendments

The 1957 amendment increased the per cent of tax of the amount by which the gross value of product exceeds $500,000.00 from 1% to 1¼%.

The 1959 amendment increased the rate of tax from ¼ of 1% to ½ of 1% on amounts from $100,000 to $250,000; from ½ of 1% to ¾ of 1% on amounts from $250,000 to $400,000, and from ¾ of 1% to 1% on amounts from $400,000 to $500,000.

Repealing Clauses

Section 2 of Ch. 220, Laws 1957 and Sec. 2 of Ch. 176, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 220, Laws 1957 provided the act should be in effect from and after July 1, 1957.

Section 3 of Ch. 176, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

84-2006. (2344.6) **Computation and notice of tax.** The state board of equalization shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said board shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p. m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have beeen sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; amd. Sec. 1, Ch. 165, L. 1959.

Amendment

The 1959 amendment advanced the due date set forth in the second sentence from November 30 to June 30.

84-2007. (2344.7) **Delinquent taxes — penalty.** All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p. m., on the thirtieth day of June following the date when the same are assessed and certified to the state treasurer, and as the same become delinquent a penalty of ten per centum shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of twelve per centum per annum from the date of becoming delinquent until paid.

History: En. Sec. 7, Initiative No. 28, 1925; amd. Sec. 2, Ch. 165, L. 1959.

Amendment

The 1959 amendment advanced the due date from November 30 to June 30.

Repealing Clause

Section 3 of Ch. 165, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

Section 84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.

84-2102. (2408.2) **Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.** Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within the state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning July 1, 1957, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to one-half (½) of one (1) cent for each one thousand (1000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale, and that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths (4/10) pounds per square inch, and at a temperature of sixty (60)

degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

History: En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957.

Amendment

The 1957 amendment substituted the word "consumers" for the words "the public" each time it appears in this section and also substituted "beginning July 1, 1957" for the year "1934" and "one-half (½)" for "three-eighths (⅜)."

Repealing Clause

Section 2 of Ch. 205, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

Section 84-2202. Oil producers' license tax—amount—exceptions.

84-2202. (2398) **Oil producers' license tax — amount — exceptions.** Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) two per cent of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) two and one-half per cent of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person

during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959.

Amendments

The 1957 amendment substituted "beginning July 1, 1957" for the year "1923"; substituted a semicolon, the words "computed at the following rates:" and a new subd. (a) reading, "(a) two per cent of an amount determined by multiplying the number of producing wells of such person on each lease or unit by the total gross value of the first four hundred fifty (450) barrels of petroleum and other mineral or crude oil produced from such lease or unit in each calendar quarter" for the words "in an amount equal to two per centum of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year"; and created a new subd. (b), inserting at the beginning thereof the words "two and one-half per cent of the total gross value of all such production of such person in excess of the first four hundred fifty (450) barrels per calendar quarter from each lease or unit."

The 1959 amendment substituted present subd. (a) and the portion of present subd. (b) preceding the first semicolon therein, respectively, for the subd. (a) inserted by the 1957 amendment and for the words inserted by the 1957 amendment at the beginning of subd. (b).

Repealing Clauses

Section 2 of Ch. 21, Laws 1957 and Sec. 3 of Ch. 172, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 221, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

Section 2 of Ch. 172, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

CHAPTER 24—LICENSE TAXES—STORE LICENSE

Section 84-2402. Application and fee for license.
84-2404. Expiration and renewal of licenses.
84-2405. Retailers subject to act—license fees for.
84-2406. Annual license fees—who must procure license.
84-2407. Wholesale store licenses.

84-2402. Application and fee for license. Any person, firm, corporation, association, co-partnership or group desiring to open, establish, operate or maintain a store in the state of Montana prior to September first of that calendar year shall apply to the state board of equalization for license to do so. The application shall be made upon a form which

shall be prescribed and furnished by the state board of equalization, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state board of equalization may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store, but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank.

Each such application shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407.

History: En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted from the third paragraph a requirement of a fifty-cent filing fee.

84-2404. Expiration and renewal of licenses. All licenses shall be so issued so as to expire upon the thirty-first day of December of each calendar year. On or before the first day of January of each year, every firm, person, corporation, association, co-partnership having a license, shall apply to the state board of equalization for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state board of equalization.

Each such application for a renewal license shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407.

No license shall lapse prior to the first day of March next following the year for which the license was issued, and if, by such first day of March, an application for a renewal license has not been made, the fee charged shall be double the rate prescribed in sections 84-2405, 84-2406 and 84-2407.

History: En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted from the second paragraph a requirement of a fifty-cent filing fee.

84-2405. Retailers subject to act—license fees for. Every person, firm, corporation, association, co-partnership or group opening, establishing, operating or maintaining one or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the

members shall not be grouped for computing the license fee to be paid by such person, firm, corporation, association, or co-partnership or retailer under this act, but such units or members shall be taxed as individual units; and provided further, that the term "store" shall not mean or include for the purpose of computing the license fee prescribed in this section the following types of business, but that they shall be licensed under the prescribed fees in section 84-2406: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent (75%) of the gross business is in petroleum products exclusively; or lumber yards where seventy-five per cent (75%) of the gross business is in building material and hardware exclusive; or grain elevators where seventy-five per cent (75%) of the gross business is dealing in grains and seeds exclusively; and those businesses in which the sale of goods, wares, and merchandise is less than twenty-five per cent (25%) of the gross business.

The license fee herein prescribed shall be paid annually.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be six dollars ($6.00).

2. Upon the second store, the annual license fee shall be fifty-one dollars ($51.00).

3. Upon the third store, the annual license fee shall be one hundred and one dollars ($101.00).

4. Upon the fourth store, the annual license fee shall be one hundred and fifty one dollars ($151.00).

5. Upon the fifth store, and on each store in excess of five stores, the annual license fee shall be two hundred and one dollars ($201.00).

History: En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted "and shall be in addition to the filing fees prescribed in sections 84-2402 and 84-2404" at the end of the second paragraph; and increased the license fee by $1.00 in each of the five classes.

84-2406. Annual license fees—who must procure license. Every person, firm, corporation, association, co-partnership or group opening, establishing, operating, or maintaining one or more stores or mercantile establishments within this state under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, who deal in petroleum products, building materials, and hardware and grain elevators, and those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent (25%) of the gross business, subject to the following restrictions: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent (75%) of the gross business is in petroleum products exclusively; those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent (25%) of the gross business; lumber yards where seventy-five per cent (75%) of the gross business is in building materials and hardware exclusively; grain elevators where seventy-five per cent (75%) of the gross business is in grains and

seeds exclusively, shall pay the annual license fee prescribed in this section for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments, but shall not be required to pay the license fees prescribed in section 84-2405.

The annual license fees herein prescribed shall be paid annually.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be six dollars ($6.00).

2. Upon the second store, the annual license fee shall be eight dollars and fifty cents ($8.50).

3. Upon the third store, the annual license fee shall be sixteen dollars ($16.00).

4. Upon the fourth store, the annual license fee shall be twenty-three dollars and fifty cents ($23.50).

5. Upon the fifth store, the annual license fee shall be thirty-one dollars ($31.00).

6. Upon the sixth store, and each store in excess of six (6), the annual license fee shall be thirty-eight dollars and fifty cents ($38.50).

History: En. Sec. 6, Ch. 163, L. 1939; amd. Sec. 12, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted "and shall be in addition to the filing fees prescribed in sections 84-2402 and 84-2404" at the end of the second paragraph; and increased the license fee by $1.00 in each of the six classes.

84-2407. Wholesale store licenses. Wholesale stores shall be taxed in all cases as individual units at the rate of thirty-eight dollars and fifty cents ($38.50) per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section 84-2405 or 84-2406, as the case may be, for the conduct of a retail store, in addition to the wholesale license herein provided for.

History: En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the license fee from $37.50 to $38.50.

CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

Section 84-2601. Annual tax levied on gross income of telephone business.
84-2602. Statement and payment on gross income—certain business excluded.

84-2601. Annual tax levied on gross income of telephone business. That on and after the first day of April, 1957, there is hereby levied and shall be collected an annual tax of one and one-half per cent (1½%) of the gross income, in excess of two hundred fifty dollars ($250.00) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall

be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957.

Amendment

The 1957 amendment substituted "April, 1957" for "April, 1947" and raised the annual tax from 1¼% to 1½%.

84-2602. Statement and payment on gross income—certain business excluded. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending September 30, 1957, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in the amount equal to one and one-half per cent (1½%) of such gross income.

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957.

Amendment

The 1957 amendment substituted "September 30, 1957" for "June 30, 1937" and "one and one-half per cent (1½%)" for "(1¼%)."

Repealing Clause

Section 3 of Ch. 213, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 213, Laws 1957 provided the act should be in effect from and after the first day of July, 1957.

CHAPTER 27—LICENSES—GENERAL PROVISIONS CONCERNING COUNTY LICENSES

Section 84-2708. Disposal of license moneys.

84-2708. (2420) Disposal of license moneys. All moneys collected for licenses must be paid into the treasury of the county in which the same are collected. The county treasurer shall retain fifty per cent thereof for the use of the county, he shall pay over forty-five per cent thereof to the state treasurer for the use of the general fund of the state and he shall pay over five per cent thereof to the state treasurer for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control.

History: En. Sec. 1, Ch. 76, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921; re-en. Sec. 2420, R. C. M. 1921; amd. Sec. 104, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control" for "for the use of the state bounty fund" at the end of the section.

CHAPTER 28—LICENSES—FURNISHING TRADING STAMPS WITH SALE OF MERCHANDISE

(Unconstitutional—Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220)

84-2805 to 84-2812. Unconstitutional.

Unconstitutionality

These sections (Secs. 1 to 8, Ch. 153, Laws 1961), requiring a license for the issuance of trading stamps, were declared unconstitutional in Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

CHAPTER 33—LICENSES—MOVING PICTURE THEATERS

(Repealed—Section 1, Chapter 33, Laws of 1957)

84-3301 to 84-3307. Repealed.

Repeal

These sections (Secs. 1 to 6, 8, Ch. 91, L. 1937; amd. Sec. 1, Ch. 74, L. 1953), relating to licenses for moving picture theaters, were repealed by Sec. 1, Ch. 33, Laws 1957, effective April 1, 1957.

CHAPTER 34—LICENSES—PRODUCE WHOLESALERS

84-3410. (2443.10) Appeal to district court.

Cross-Reference

Application of Montana Rules of Civil Procedure to appeals from commissioner, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 35—LICENSES—PUBLIC CONTRACTORS

84-3501. (2433.1) Definitions.

Compiler's Note

Chapter 277, Laws 1965, enacted new provisions for a license tax payable only by nonresident public contractors. However, on April 26, 1965, the Supreme Court of Montana declared this act unconstitutional and void. State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, — M —, — P 2d —.

CHAPTER 38—LEVY OF TAXES

Section 84-3804. Increase of state tax levy—support units of university.
84-3807. Tax operates as a judgment or lien.

84-3804. Increase of state tax levy—support units of university. The rate of taxation on real and personal property for state purposes, as is hereafter defined, for each year for a period of ten (10) years beginning with the year 1959; shall be increased six (6) mills on each dollar of taxable valuation in addition to the levy which is now or may hereafter be authorized by section 9 of article XII of the constitution of the state of Montana, and the legislative assembly is authorized and empowered to levy an additional tax for state purposes for each of said years of not exceeding six (6) mills on each dollar of taxable valuation for state purposes, and all money derived from said additional levy of six (6) mills for each of said years or so much thereof as may be necessary shall be appropriated by the legislative assembly for the support, maintenance and improvement of the state university of Missoula, the state college of agriculture and mechanic arts at Bozeman, the Montana state school of mines at Butte, the western Mon-

tana college of education at Dillon, the eastern Montana college of education at Billings, and the northern Montana college at Havre, now comprising the units of the university of Montana, together with the agricultural experiment station and its branches and substations, and the agricultural extension service, including the soil survey and grain laboratory.

History: En. Sec. 1, Ch. 218, L. 1957. Referendum No. 61, approved at election Nov. 4, 1958, effective under Governor's proclamation on Dec. 8, 1958.

Compiler's Notes

This section is substituted for Sec. 1, Ch. 217, Laws 1947 and given the same section number at it covers the same subject matter. Section 1, Ch. 217, Laws 1947 was repealed by Sec. 4, Ch. 218, Laws 1957, effective Dec. 8, 1958.

Sections 2 and 3 of Ch. 218, Laws 1957 provided for submission of the act to the people at the general election of 1958.

Effective Date and Repealing Clause

Section 4 of Ch. 218, Laws 1957 read "This act shall be in full force and effect from and after its passage by this legislative assembly, approval by a majority vote of the qualified electors and proclamation of the governor thereafter; provided however, nothing contained herein shall be construed to or shall in any manner effect a repeal of chapter 217 of the laws of 1947 unless a majority of all votes cast at the referendum election herein provided shall be in favor of this act. Upon approval of this act by a majority of all votes cast at the referendum election herein provided, chapter 217 of the laws of 1947 and all other acts and parts of acts in conflict herewith shall be hereby repealed." Governor's proclamation, dated December 8, 1958.

84-3805. (2150) Rate of county fixed by board of county commissioners.

Temporary Provision for Emergency Levies by Counties and Municipalities

Chapter 31, Laws 1965, provides authority until December 31, 1967 for counties and municipalities to make special levies to cover certain emergency expenses. The act read: "An act concerning tax levies for city and county emergencies and containing an effective date and containing an expiration date.

"Section 1. As used in this act: (1) An 'emergency' may be:

"(a) A fire, flood, explosion, storm, blizzard, earthquake or epidemic; or

"(b) An occurrence requiring the immediate preservation of order or public health; or

"(c) An occurrence requiring the restoration of a condition of usefulness which has been destroyed; or

"(d) An occurrence which requires relief of a stricken community.

"(2) 'County disaster committee' includes:

"(a) The members of the agricultural stabilization and conservation county committee of the county involved;

"(b) The county commissioners and mayor or mayors of the county involved;

"(c) The office manager of the soil conservation service office in the county involved;

"(d) The county civil defense director;

"(e) The county agriculture extension agent;

"(f) Such other persons not to exceed two (2) in number as the county commissioners may appoint.

"(3) 'Council' means the city council of an incorporated municipality.

"(4) 'Board' means the board of county commissioners.

"(5) 'Mayor' means the mayor of an incorporated municipality.

"(6) 'Municipality' means an incorporated municipality.

"Section 2. The county disaster committee shall determine by a majority vote when an emergency exists. Upon the determination that an emergency does exist, they shall submit a resolution to the mayor or mayors of municipalities of the county and to the chairman of the board.

"Section 3. (1) Upon receipt of the resolution, the mayor or mayors and the chairman of the board shall call joint or separate meetings of the council or councils and the board, respectively.

"(2) A mayor or chairman of a board shall give reasonable notice of the time and place at which the meeting or meetings shall be held.

"Section 4. (1) If at the meeting or meetings the council and the board respectively find from the resolution of the county disaster committee that an emergency exists, they shall place in their respective minutes a resolution stating facts constituting the emergency.

"Section 5. (1) The council and the board shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the council shall not exceed two (2) mills on the municipalities taxable valuation. The millage levied by the board shall not exceed

two (2) mills on the taxable valuation of the county outside the municipality or municipalities.

"(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

"(3) An additional levy or levies may be made by the appropriate levying body providing that the sum of the levies for emergencies as set forth in this act not exceed two (2) mills in any one year.

"(4) All levies under this act may only be passed by a unanimous vote of the appropriate body.

"(5) From and after July 1, 1965 no emergency shall be declared more than 'two' (2) weeks after the occurrence of such emergency event.

"Section 6. Funds remaining upon the restoration to normal after the emergency shall remain in a separate fund known as the emergency fund and shall be used for no other purpose.

"Section 7. This act is effective on its passage and approval.

"Section 8. This act shall be in force and effect until December 31, 1967."

Time of Attachment of Lien

Even though section 84-3809 provides that the tax lien attaches in March, the lien cannot become choate for the purpose of determining its priority as against federal tax liens until the amount is determined pursuant to this section. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

84-3807. (2152) **Tax operates as a judgment or lien.** Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes and deliver the same to the sheriff. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907; re-en. Sec. 2152, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1963. Cal. Pol. C. Sec. 3716.

Amendment

The 1963 amendment substituted "personal property in the possession of the person assessed from and after the date the assessment is made" at the end of the first sentence for "personal property of the delinquent"; and inserted the second and third sentences.

Repealing Clause

Section 2 of Ch. 166, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Migratory Cattle

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, county had a lien for the tax under this section, as amended in 1963, and section 84-3808 and properly seized and noticed up for sale on May 7, 1963, 200 head of cattle, as the lien was not limited to 1960 cattle by section 84-4202, as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, — M —, 394 P 2d 1013, 1015.

Priority of Tax Claims

This section and section 84-3809 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. United States v. Christensen, 218 F Supp 722, 728, distinguished in 232 F Supp 330, 336.

Liens for taxes take precedence over mortgages of a federal agency. United States v. Christensen, 218 F Supp 722, 727.

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

Resort to Property

Property is resorted to for the purpose of ascertaining the amount of the delin-

quent tax and for the purpose of enforcing its payment where the owner makes default. O'Brien v. Ross, — M —, 394 P 2d 1013, 1016.

Taxes on Realty Not Collectible by Court Action

Taxes on real estate cannot be collected by civil action, but only through voluntary payment or sale of the property at tax sale. United States v. Christensen, 218 F Supp 722, 724.

84-3808. (2153) Tax on personal property lien on realty, etc.

Migratory Cattle

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, county had a lien for the tax under this section and section 84-3807, as amended in 1963, and properly seized and noticed up for sale on May 7, 1963, 200 head of cattle, as the lien was not limited to 1960 cattle by section 84-4202 as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, — M —, 394 P 2d 1013, 1015.

Resort to Property

Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment where the owner makes default. O'Brien v. Ross, — M —, 394 P 2d 1013, 1016.

References

Cited in United States v. Christensen, 218 F Supp 722, 723.

84-3809. (2154) Tax upon real property and tax on, etc.

Priority of Tax Claims

This section and section 84-3807 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. United States v. Christensen, 218 F Supp 722, 728, distinguished in 232 F Supp 330, 336.

Liens for taxes take precedence over mortgages of a federal agency. United States v. Christensen, 218 F Supp 722, 727.

The relative priority of taxes upon real property under Montana law cannot be determined solely upon the basis of this section. United States v. Christensen, 218 F Supp 722, 724.

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

Time of Attachment of Lien

Even though this section provides that the tax lien attaches in March, the lien cannot become choate for the purpose of determining its priority as against federal tax liens until the amount is determined pursuant to section 84-3805. Streeter Bros. v. Overfelt, 202 F Supp 143, 145.

CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section 84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken.
84-4198. Lessee of tax-deed lands has right within 30 days to purchase at appraised value.

84-4101. (2169) Treasurer to publish notice of delinquency.

Notice of Delinquency

The notice mentioned in section 84-4105 is the same one referred to in this section and not the ones "mailed" to delinquent taxpayers as provided in subd. (2) of this section. Salvation Army v. State, — M —, 396 P 2d 463, 466. (Dissenting opinion, — M —, 396 P 2d 463, 466.)

Penalties and Interest

A taxpayer, after receiving a notice of delinquent taxes as provided by subd. (2) of this section, may not pay his delinquent taxes and then be relieved of the obligation to pay penalty and interest on said taxes. Salvation Army v. State, — M —, 396 P 2d 463, 466. (Dissenting opinion, — M —, 396 P 2d 463, 466.)

Failure of present county treasurer's predecessors to send plaintiff any notice "showing the amount of taxes due and delinquent for other years," as provided in subd. (2) of this section, did not relieve plaintiff of the obligation to pay the principal of the delinquent taxes, but did relieve plaintiff of any obligation to pay penalties and interest on said taxes because of the lack of such statutory notice. Salvation Army v. State, — M —, 396 P 2d 463, 466. (Dissenting opinion, — M —, 396 P 2d 463, 466.)

The phrase "legality of the tax" in subd. (2) of this section refers only to the tax itself and not to penalties and interest. Salvation Army v. State, — M —, 396 P 2d 463, 466. (Dissenting opinion, — M —, 396 P 2d 463, 466.)

84-4103. (2169.2) Time for payment of taxes—penalty and interest.

Interest and Penalties Not Part of Tax

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

84-4105. (2170) Manner of publication of notice.

Notice of Delinquency

The notice mentioned in this section is the same one referred to in section 84-4101, and not the ones "mailed" to delinquent taxpayers as provided in section 84-4101, subd. (2). Salvation Army v. State, — M —, 396 P 2d 463, 466. (Dissenting opinion, — M —, 396 P 2d 463, 466.)

84-4117. (2182) Publication of notice of tax sales.

References

Cited in United States v. Christensen, 218 F Supp 722, 724.

84-4121. (2187) Copy of publication and affidavit to be filed, etc.

References

Cited in United States v. Christensen, 218 F Supp 722, 724.

84-4122. (2189) Manner of conducting sale.

References

Cited in United States v. Christensen, 218 F Supp 722, 724.

84-4124. (2191) Designation of portion to be sold, etc.

Interest and Penalties Not Part of Tax

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

Taxes on Realty Not Collectible by Court Action

Taxes on real estate cannot be collected by civil action, but only through voluntary payment or sale of the property at tax sale. United States v. Christensen, 218 F Supp 722, 724.

84-4127. (2194) Treasurer to give purchaser a duplicate certificate, etc.

References

Cited in United States v. Christensen, 218 F Supp 722, 724.

84-4128. (2195) Signature on certificate of sale, etc.

References

Cited in United States v. Christensen, 218 F Supp 722, 724.

84-4130. (2197) Lien of state when vests in purchaser, etc.

References

Cited in United States v. Christensen, 218 F Supp 722, 725, 729.

84-4132. (2201) Time for redemption.

Mining Property

Under the provisions of section 93-2829 where a mining company neglected to pay its taxes, a cotenant, having a right to operate the mining property and pay all expenses of such operation and account to other cotenants, had sufficient interest in patented mining claims, separately assessed to the mining company, to permit her to redeem the property from a tax sale. Dudley v. Higgins, 141 M 140, 375 P 2d 689, 691.

References

Cited in United States v. Christensen, 218 F Supp 722, 725.

84-4132.1. Hospitals, charitable corporations, nonprofit associations—redemption of lands after 20 years where no assignment of certificate or no action for tax deed taken. That from and after the passage and approval of this act, any hospital, charitable corporation, or nonprofit association having an equitable or legal interest in real estate heretofore sold for taxes or assessments to any county, or which has been struck off to any county when the property was offered for sale, or to which real property a lien for taxes or assessments has attached, and where such sale or tax lien is more than twenty (20) years old, and no assignment of the certificate of such sale or of said tax lien has been made, and no action for the issuance of a tax deed has been taken, shall be permitted to redeem the same and pay such tax lien, by paying the original tax or assessment due thereon, without the payment of any penalty or interest thereon. Such redemption of tax sale or payment of tax lien must be made on or before the 1st day of December, 1957, if it is to be made without the payment of penalty or interest. This act shall not apply to the purchaser of any certificate of sale made prior to the passage and approval of this act.

History: En. Sec. 1, Ch. 112, L. 1957.

Title of Act

An act to permit real property to be redeemed from tax sale or tax lien where such sale or lien is more than twenty (20) years old, and no assignment thereof has been made, and no proceedings for tax deed initiated, by paying the original tax or assessment, provided such original taxes or assessment be paid on or before December 1, 1957; providing for a constitutionality provision and providing for an effective date and repealing all acts and parts of acts in conflict herewith.

Separability Clause

Section 2 of Ch. 112, Laws 1957 read "If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portion of this act."

Repealing Clause

Section 4 of Ch. 112, Laws 1957 read "All acts and parts of acts are hereby repealed."

Effective Date

Section 3 of Ch. 112, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

84-4138. (2207) Assignment of rights of county in property, etc.

Interest and Penalties Not Part of Tax

While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. United States v. Christensen, 218 F Supp 722, 729.

84-4144. Confirmation of tax deed—action for, authorized.

Cross-Reference

Application of Montana Rules of Civil Procedure to action for confirmation of tax deed, see M. R. Civ. P., Rule 81(a), Table A.

References

Cited in United States v. Christensen, 218 F Supp 722, 725.

84-4147. Defendants, rights of.

References

Cited in United States v. Christensen, 218 F Supp 722, 725.

84-4150. Title conveyed.

References

Cited in United States v. Christensen, 218 F Supp 722, 725.

84-4151. (2209) Notice of application for tax deed.

Affidavit

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by this section, such affidavit was defective and hence the tax deed is fatally defective. Bentley v. Rosebud County, 230 F 2d 1.

Methods of Obtaining Tax Deed

The holder of a tax sale certificate may obtain a deed through notice under this section or through action pursuant to section 84-4162. United States v. Christensen, 218 F Supp 722, 725.

Proof of Publication

Assignees unable to produce proof of publication of notice of application for tax deed, who had obtained assignment of tax certificate from county after creditors had executed on judgment against debtors from whom the county had taken the property, could not quiet title as against judgment creditors, who had become owners of certificate of sale. Musgrove v. Olds, — M —, 394 P 2d 751, 753.

Special Assessment by Irrigation District

Where irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under this section. Vail v. Custer County, 132 M 205, 315 P 2d 993, 999.

84-4154. (2210) Redemption from tax sales.

References

Cited in United States v. Christensen, 218 F Supp 722, 725.

84-4155. (2211) Piecemeal redemption of land sold for taxes.

References

Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436; United States v. Christensen, 218 F Supp 722, 725.

84-4156. (2212) Affidavit showing notice given—sum allowed therefor.

Affidavit

Where affidavit recited that notice of application was published for two consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by section 84-4151, such affidavit was defective and hence the tax deed fatally defective. Bentley v. Rosebud County, 230 F 2d 1.

References

Cited or applied as section 2212, R. C. M. 1935 in Marek v. Smith, 132 M 73, 314 P 2d 864, 865.

84-4158. (2214) Procedure in actions to quiet title to tax deed property.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

Deposit of Taxes and Other Costs

Where order was entered in conformity with opinion of supreme court, requiring plaintiff to pay to defendant certain sum and reciting that if plaintiff refused to deposit sum by specified date, judgment would be entered for defendant quieting title in him and motion of plaintiff to vacate such order was not brought on for hearing for more than 12 years after it was made, laches of plaintiff barred relief. State ex rel. Johnstone v. District Court, 132 M 377, 319 P 2d 957, 959.

Order Requiring Deposit

This section, requiring the court upon hearing to fix the amount of taxes, interest, penalties, and money spent in improving the property and requiring a deposit of such amount does not authorize the court to postpone such determination and merely requires a bond be deposited to cover such amount. The court's duty is to determine the amount necessary for plaintiff to deposit in court and then fix the time for its payment. State ex rel. Johnson v. District Court, 130 M 103, 295 P 2d 1042, 1044.

References

Cited or applied in Marek v. Smith, 132 M 73, 314 P 2d 864, 866; United States v. Christensen, 218 F Supp 722, 725.

84-4160.1. (2214.2) Validation of tax deeds.

History Correction

History: En. Sec. 1, Ch. 79, L. 1933; amd. Sec. 1, Ch. 132, L. 1937; amd. Sec. 1, Ch. 94, L. 1939; amd. Sec. 1, Ch. 105, L. 1939; amd. Sec. 1, Ch. 171, L. 1947.

84-4161. (2215) Title conveyed by deed—procedure to cure defects.

Encumbrances

A tax deed conveys absolute title free from all encumbrances and free of any and all claims of defendants to quiet title actions. United States v. Christensen, 218 F Supp 722, 725.

84-4162. (2215.1) Action to procure tax deed—taxes to be paid.

Cross-Reference

Application of Montana Rules of Civil Procedure to action for tax deed, see M. R. Civ. P., Rule 81(a), Table A.

Methods of Obtaining Tax Deed

The holder of a tax sale certificate may obtain a deed through notice under section 84-4151 or through action pursuant to this section. United States v. Christensen, 218 F Supp 722, 725.

84-4168. (2215.7) Judgment—order to issue tax deed to plaintiff, etc.

Collateral Attack

Decree in favor of plaintiff, son of deceased, in action to procure tax deed could not be collaterally attacked in condemnation proceedings on the ground of defective service where it was expressly found that defendant son, and the administrator of the estate of the deceased, were the same person and that all defendants had been duly and legally served and there was no suggestion that creditors of the deceased or estate yet remained to be paid, or that final settlement of the estate would be dependent upon this asset. United States v. Hoerner, 157 F Supp 563, 564, 566.

84-4170. (2215.9) Effect of deed.

Void Assessment

Where county assessed tax on minerals and mineral rights under the land but did not assess a tax on the party's right of entry for mining purposes, a tax deed based on such proceeding was void since under Const. Art. XII, sec. 3 the minerals or mineral rights cannot be taxed. Lehfeldt v. Adams, 130 M 395, 303 P 2d 934.

References

Cited in United States v. Christensen, 218 F Supp 722, 725.

84-4176. (2222) Taxes, etc., illegally collected to be refunded.

Mandamus to Compel Refund

Mandamus was not a proper remedy to compel the county commissioners to refund erroneously collected taxes, since this section gives a plain, speedy and adequate remedy at law. Moran v. Board

of County Commrs., 139 M 351, 363 P 2d 1073, 1074.

References

Cited or applied in Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, 981.

84-4180. (2225) **What mistakes do not affect sale of property for taxes.**

Due Process

Tax sale is a proceeding in rem against the property itself and not in personam. Thus a notice with description of the property accurately contained therein suffices to support any requirements of due process. Meyer v. Chessman, 132 M 187, 315 P 2d 512, 514.

Proceedings for Tax Sale

Defendants in quiet title action acquired no property rights in disputed land by deed from transit company because at the time they received deed transit company had already been divested of title in proceedings for the taking of a tax deed. Meyer v. Chessman, 132 M 187, 315 P 2d 512, 514.

References

Cited in Vail v. Custer County, 132 M 205, 315 P 2d 993, 999.

84-4190. Sale of county tax deed lands—procedure—preferential, etc.

Reservation of Interest by County

A county may reserve such interests in tax deed land as it may have acquired by purchase or as may have been reserved by a private seller, including the right to take road building material from the land for authorized public use. Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

References

Cited in Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 502.

84-4191. Terms of sale—sale contract—deed of conveyance.

Power to Reserve Mineral Rights

In the sale of land acquired by tax deed, the county has such powers as may be exercised by a private seller of land, and these powers include the waiver of forfeiture provisions in a contract after a forfeiture has been declared and the right to reserve the right to take road building material from the land for authorized public use. Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

84-4193. Unsold land—how disposed of—interest rate.

References

Cited in Flom v. Unknown Heirs of Conrad, 132 M 574, 319 P 2d 499, 502.

84-4198. Lessee of tax-deed lands has right within 30 days to purchase at appraised value. Whenever tax deed lands now held, or hereafter acquired, by any county of this state, have been leased pursuant to the provisions of section 84-4194, and thereafter the board of county commissioners shall receive an offer for the purchase of said lands under the provisions of section 84-4193, the said board shall by registered mail notify the lessee, who shall have a period of thirty (30) days after the mailing of such notice within which he may purchase the leased property at the appraised value thereof. Provided that nothing herein contained shall prohibit the board from, at any time, reappraising, readvertising and offering such land at public sale under the provisions of section 84-4190. When tax deed lands held by the county are offered at public sale, pursuant to the provisions of section 84-4190, the lessee of such lands need not make a higher bid than others, but shall if bidding an amount equal to the highest bidder be given the preference.

History: En. Sec. 1, Ch. 147, L. 1943; amd. Sec. 1, Ch. 75, L. 1963.

Amendment

The 1963 amendment added the final sentence.

CHAPTER 42—COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE—ROAD AND POOR TAXES

Section 84-4202. Duty of treasurer.

84-4202. (2239) **Duty of treasurer.** The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the assessor's report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession, upon any monies in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lienholder, if any.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R. C. M. 1921; amd. Sec. 2, Ch. 102, L. 1923; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963. Cal. Pol. C. Sec. 3821.

Amendment

The 1963 amendment inserted the words "or any other personal property in the hands of the delinquent taxpayer" in the second sentence of the first paragraph; added the third and fourth paragraphs; and deleted a final paragraph which read, "Nothing herein shall be construed as to prevent the county treasurer from collecting taxes due on personal property by seizure and sale thereof at any time after the expiration of the period hereinbefore mentioned."

Repealing Clause

Section 2 of Ch. 165, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 165, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

Resort to Property

Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment where the owner makes default. O'Brien v. Ross, — M —, 394 P 2d 1013, 1016.

Seizure and Sale of Cattle

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, county had a lien for the tax under sections 84-3807 and 84-3808 and properly seized and noticed up for sale on May 7, 1963, 200 head of cattle, as the lien was not limited to 1960 cattle by this section as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, — M —, 394 P 2d 1013, 1015.

CHAPTER 43—COLLECTION OF TAXES BY SUIT

84-4301. (2253) Collection of taxes by action.

References

Cited in United States v. Christensen, 218 F Supp 722, 724.

84-4302. (2254) Complaint in action for taxes.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

References

Cited in United States v. Christensen, 218 F Supp 722, 724.

CHAPTER 45—PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

Section 84-4501. Payment of license fees under protest—action to recover.

84-4501. (2409) Payment of license fees under protest—action to recover.

Whenever any license fee is demanded of any person for the use and benefit of the state of Montana, and the same is deemed unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be deemed unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the tax. The person paying, or his legal representatives, may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the tax to recover the same, without interest; provided, that any action instituted to recover any license paid under protest shall be commenced, and summons and copy of complaint served, within sixty (60) days after the date of payment thereof to the state agency or officer responsible for collecting the tax. If such action be finally decided adversely to the state, the state treasurer shall, upon receiving a copy of the final judgment in said action, refund such license fee to the person in whose favor such judgment is rendered.

History: En. Sec. 1, Ch. 188, L. 1921; re-en. Sec. 2409, R. C. M. 1921; amd. Sec. 1, Ch. 197, L. 1955; amd. Sec. 3, Ch. 126, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

Prohibition as Remedy

District court should have denied application for writ of prohibition to restrain board of equalization from enforcing amendments to regulations relating to corporation license tax where tax could be paid under protest and action brought to recover under this section. State ex rel. Fulton v. District Court, 139 M 573, 366 P 2d 435, 437.

84-4502. (2269) Payment of taxes under protest—action to recover.

Constitutionality

The 1955 amendment to this section properly included additional requirements for bringing actions based on the payment of taxes under protest and the amending act was not unconstitutional as being in contravention of section 23 of article 5 of the Montana constitution. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 571.

Complaint Insufficient

Taxpayer's complaint to recover excessive taxes paid under protest failed to state a cause of action where it failed to allege that application to the county board of equalization for reduction in assessment before resorting to court, or appeared before county board, state board of equalization or anyone charged with the equalization of taxes, and defendant's demurrer should have been sustained. Blair v. Potter, 132 M 176, 315 P 2d 177, 178, 180.

Summons in Action for Refund

This section grants the taxpayer a choice of bringing the action against the officer to whom the tax was paid or against the county in whose behalf the tax was collected and the state board of equalization and, where both the county treasurer and the state board of equalization were named as parties defendant, the fact that the service of summons on the board was properly quashed did not justify dismissal of the action against the county treasurer. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 572.

Time Limitations

The words "and summons served," inserted by the 1955 amendment made an additional condition to be fulfilled by taxpayers bringing an action to recover taxes paid under protest and the 60-day limitation applies to both commencing the action and serving the summons. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 571.

References

Cited in Great Northern Railway Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 504.

84-4503. (2270) Assessment for taxation—increase over statement, etc.

Sole Remedy for Over-valuation

Where a person is liable to taxation for personal and real property, his sole remedy for an over-valuation and over-taxation is by the statutory procedure of appearing before the proper taxing boards in the first instance. Blair v. Potter, 132 M 176, 315 P 2d 177, 181.

References

Cited in Great Northern Railway Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 504.

84-4504. (2272) Other remedies superseded.

References

Cited in Blair v. Potter, 132 M 176, 315 P 2d 177, 180.

CHAPTER 46—BANKS—TAXATION

84-4603. (2065) Payment of taxes—entry of assessment.

Time of Assessment

The shares of a bank are not assessed until the statements are furnished by the banks 5 days after demand, or assessment by assessor in case of failure of banks to furnish statements. Yellowstone Bank v. State Board of Equalization, 137 M 198, 351 P 2d 904, 907.

CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE

Section 84-4701.1. All-purpose exclusive levy authorized.
84-4701.2. Maximum rate of all-purpose exclusive levy.
84-4701.3. Allocation of all-purpose levy.
84-4701.4. All-purpose levy election binding for year—abandonment in succeeding years.
84-4701.5. Certification of all-purpose levy to county officers.
84-4711. Qualifications for voting on creation or increasing municipal or school indebtedness.

84-4701. (5194) Limitation on amount of tax for municipal purposes, etc.

References

Cited in Hill v. Billings, 134 M 282, 328 P 2d 1112, 1116.

84-4701.1. All-purpose exclusive levy authorized. It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all purpose exclusive annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. This act shall not be construed as repealing those statutes providing for multiple separate levies.

History: En. Sec. 1, Ch. 82, L. 1965.

Title of Act

An act to authorize cities and towns to make an all purpose annual mill levy in lieu of all levies now authorized by law; and providing an effective date.

84-4701.2. Maximum rate of all-purpose exclusive levy. Notwithstanding the provisions of the statutes of Montana to the contrary, the cities and towns of the state of Montana may make an all purpose and exclusive annual levy which does not exceed the average number of mills on the dollar levied for all purposes in the preceding three (3) fiscal years upon the assessed value of all the taxable property in such cities and towns, for all municipal purposes in lieu of the multiple levies now authorized by statute.

History: En. Sec. 2, Ch. 82, L. 1965.

84-4701.3. Allocation of all-purpose levy. In the event the all purpose levy method, provided for in section 2 [84-4701.2] of this act, is followed in municipal financing, any municipality following it shall allocate the levy on a mill basis to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem best.

History: En. Sec. 3, Ch. 82, L. 1965.

84-4701.4. All-purpose levy election binding for year—abandonment in succeeding years. Any municipality electing to follow the all purpose levy method provided for in section 2 [84-4701.2] of this act shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

History: En. Sec. 4, Ch. 82, L. 1965.

84-4701.5. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county

officers for collection, the same shall be certified as a single levy for general fund purposes.

History: En. Sec. 5, Ch. 82, L. 1965.

Effective Date

Section 6 of Ch. 82, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

84-4711. (5199.1) Qualifications for voting on creation or increasing municipal or school indebtedness. That from and after the passage and approval of this act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof; provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another city, town, school district or other municipal corporation.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; amd. Sec. 1, Ch. 126, L. 1959.

Amendment

The 1959 amendment added at the end of the section the proviso concerning persons residing in one city, town, school district or municipal corporation and voting in another.

Effective Date

Section 2 of Ch. 126, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 5, 1959.

CHAPTER 48—FREIGHT LINE COMPANIES—TAXATION

Section 84-4825. Disposition of moneys—refund claims.

84-4825. Disposition of moneys—refund claims. All taxes collected under the provisions of this act shall be credited by the state treasurer to the state general fund. If any claim for refund be pending before the board, the board shall determine whether a refund should be made. An action or proceeding in court to determine the correctness of such tax must be instituted within sixty (60) days after the payment of the tax.

History: En. Sec. 9, Ch. 137, L. 1949; amd. Sec. 4, Ch. 126, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

CHAPTER 49—INCOME TAX

Section 84-4901. Income tax—definitions.
84-4902. Rate of income tax.
84-4903. Tax on nonresident.
84-4903.1. Collection of tax from nonresidents—withholding authorized.
84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization—additional reports and information—rules and regulations—order for withholding payments.
84-4903.3. Exceptions from withholding requirements.
84-4903.4. Withholding agent.
84-4903.5. Quarterly payment by withholding agent—exception.
84-4903.6. Modification of withholding provisions.

84-4903.7. Failure to withhold or pay—penalties.
84-4903.8. Board may require withholding agent to make return and pay tax at any time.
84-4903.9. Amounts withheld as lien against agent—priority.
84-4903.10. Rights of nonresident.
84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor.
84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.
84-4903.13. Rules and regulations.
84-4905. Adjusted gross income.
84-4907. Nonresident taxpayers.
84-4907.1. Veterans' bonus—exemption from income tax law.
84-4910. Exemptions.
84-4911. Income tax involving partnership—partnership statements required.
84-4914. Returns and payment of tax—penalty and interest—refunds—credits.
84-4915. Exemption allowed nonresident—effect of changing resident status.
84-4922. Revision—application—hearing—adjustment.
84-4923.1. Review by court.
84-4924. Penalties for violations of act.
84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states.
84-4943. Deduction and withholding of tax from wages—amount.
84-4956. Credits and refunds.
84-4958. Release of lien or partial discharge of property.

84-4901. (2295.1) **Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

(1). * * * [Same as parent volume.]

(2) The word "taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this act, and does not include corporations.

(3) to (7). * * * [Subdivisions (3) to (7), same as parent volume.]

(8) The words "foreign country" or "foreign government" means any jurisdiction other than one embraced within the United States. The words "United States" include the states, the territory of Hawaii, and the District of Columbia.

(9) and (10). * * * [Same as parent volume.]

(11) The term "taxable income" means the gross income of a taxpayer less the deductions and exemptions provided for in this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959.

Amendment

The 1959 amendment in subd. (2) inserted the words "resident or nonresident"; in subd. (8) substituted "the territory of Hawaii" for "the territories of Alaska and Hawaii" and added subd. (11).

References

Cited or applied in State v. Toomey, 135 M 35, 335 P 2d 1051.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

(a) On the first one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of one per centum (1%);

(b) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of two per centum (2%);

(c) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of three per centum (3%);

(d) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of four per centum (4%);

(e) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of five per centum (5%);

(f) On any taxable income in excess of seven thousand dollars ($7,000.00) at the rate of seven per centum (7%).

Provided, however, that as to all taxable periods commencing after December 31, 1964, to and including all taxable periods ending on or before December 30, 1967, there shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax at the following rates:

(a) On the first one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of 1.1%;

(b) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of 2.2%;

(c) On the next one thousand dollars ($1,000.00) of taxable income, or any part thereof, at the rate of 3.3%;

(d) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of 4.5%;

(e) On the next two thousand dollars ($2,000.00) of taxable income, or any part thereof, at the rate of 5.6%;

(f) On any taxable income in excess of seven thousand dollars ($7,000.00) at the rate of 7.9%.

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965.

Amendments

The 1957 amendment completely revised the rates of income tax (subds. (a) to (h)). For this portion of this section before amendment see parent volume.

The 1959 amendment substituted "taxable income" for "net income" each time it appears in this section; substituted "taxpayer" for "individual" and "exemptions" for "exceptions" in the preliminary sentence; raised the rate in subd. (b) from 1½% to 2%; raised the rate in subd. (c) from 2% to 3%; substituted $2,000 for $1,000 and raised the rate from 2½% to 4% in subd. (d); substituted $2,000 for $1,000 and raised the rate from 3% to 5% in subd. (e); and substituted subd. (f) for former subds. (f), (g) and (h) which read as follows: "(f) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of three and one-half per centum (3½%); (g) On the next one thousand dollars ($1,000.00) of net income, or any part thereof, at the rate of four per centum (4%); (h) On any net income in excess of seven thousand dollars ($7,000.00) at the rate of five per centum (5%)."

The 1965 amendment inserted "any" after "or" in clause (b) of the first paragraph; and added the second paragraph with its lettered clauses following clause (f) of the first paragraph.

Repealing Clauses

Section 2 of Ch. 228, Laws 1957 and Sec. 2 of Ch. 265, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 228, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

Section 3 of Ch. 265, Laws 1959 read "This act shall be in full force and effect from and after December 31, 1959."

Section 2 of Ch. 281, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 15, 1965.

84-4903. (2295.3) **Tax on nonresident.** (a) A like tax is imposed upon every person not resident of this state which tax shall be levied, collected and paid annually, at the rates specified in section 84-4902, with respect to his entire net income as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state.

History: En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963.

Amendments

The 1959 amendment in subd. (a) deleted the words "except as hereinafter provided," which appeared after the words "herein defined"; deleted from the end of the subdivision the words "by such person" and added all of subd. (b) reading "(b) In the case of a nonresident officer or director of a corporation doing business in this state, such salaries, fees, or other compensation of such officer or director paid to him by such corporation shall be treated as income from sources within this state to the extent such salary, fee or other compensation is claimed as a deduction in computing income for Montana corporation license tax purposes, whether or not any personal services have been performed by such nonresident officer or director within this state."

The 1963 amendment deleted the subd. (b) that had been added by the 1959 amendment.

84-4903.1. Collection of tax from nonresidents—withholding authorized. In order to insure collection, in the manner and to the extent provided by section 84-4907, Revised Codes of Montana, 1947, as amended, of the income tax imposed upon the income of nonresidents by section 84-4903, Revised Codes of Montana, 1947, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equalization as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required.

History: En. Sec. 1, Ch. 208, L. 1959.

Title of Act

An act to insure collection of the Montana state income tax upon the income of nonresidents, and to provide for withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equalization as partial payment of such nonresidents' income tax; to provide that certain types of payments shall not be subject to withholding under this act; to provide for the method of collection and payment of amounts withheld; to provide for and define the duties of withholding agents under the act and penalties for failure of such agents to withhold or pay; and to provide for the powers and duties of the state board of equalization, county assessors, and county clerks and recorders under this act, and providing a saving clause.

84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization—additional reports and information—rules and regulations—order for withholding payments. Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, Revised Codes of Montana, 1947, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within

the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state board of equalization, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state board of equalization as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the board of equalization may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the board finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a copy of an order of the board terminating such withholdings as to the nonresident taxpayer.

History: En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961.

Amendment

The 1961 amendment after the words "located within the state of Montana" in the first paragraph deleted the words "or for leases, rentals or royalties derived from property located within the state of Montana"; and added the second and third paragraphs.

84-4903.3. Exceptions from withholding requirements. Payments made for livestock or agricultural products raised or grown outside Montana, and sold at a market within this state shall not be subject to withholding under this act.

History: En. Sec. 3, Ch. 208, L. 1959.

84-4903.4. Withholding agent. Every such person, firm, etc. required to withhold such payments under the provisions of section 2 [84-4903.2] above preceding shall be known as a withholding agent within the meaning of this act.

History: En. Sec. 4, Ch. 208, L. 1959.

84-4903.5. Quarterly payment by withholding agent—exception. Withholding agents required to deduct and withhold tax payments under the provisions of section 2 (84-4903.2, Revised Codes of Montana, 1947) shall remit such payments quarterly to the state board of equalization for each quarterly period on or before the last day of the month following the close of such quarterly period.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 2 (84-4903.2, Revised Codes of Montana, 1947) shall amount to less than ten dollars ($10.00) in each quarterly period of any year, such withholding agent shall not be re-

quired to file the quarterly returns or to make the quarterly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.

History: En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961.

Amendment

The 1961 amendment in each of the paragraphs adopted in parentheses a reference to section 84-4903.2 which had been inserted by the compiler in brackets, and after each of such references, inserted the words "Revised Codes of Montana, 1947"; in the first paragraph, after the words "state board of equalization," deleted "beginning July 1st, 1959 and" and, after the words "quarterly period," deleted the word "thereafter."

84-4903.6. Modification of withholding provisions. The conditions set forth in section 2 [84-4903.2] may be modified by the state board of equalization provided:

(a) The withholding agent shall insure the board by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements insofar as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state board of equalization under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state board of equalization shall determine the amount to be withheld.

History: En. Sec. 6, Ch. 208, L. 1959.

84-4903.7. Failure to withhold or pay—penalties. If any withholding agent knowingly fails to withhold or pay to the state board of equalization any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924, Revised Codes of Montana, 1947, with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924, Revised Codes of Montana, 1947, with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

History: En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961.

Amendment

The 1961 amendment after the words "required by this act" inserted ", or any order made pursuant to this act."

Separability Clause

Section 4 of Ch. 154, Laws 1961 read "If any portion, section, subsection, paragraph, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the remainder of the act."

Repealing Clause

Section 5 of Ch. 154, Laws 1961 repealed all acts and parts of acts in conflict therewith.

84-4903.8. **Board may require withholding agent to make return and pay tax at any time.** If the state board of equalization in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

History: En. Sec. 8, Ch. 208, L. 1959.

84-4903.9. **Amounts withheld as lien against agent—priority.** In addition to the penalties above-provided, if any withholding agent shall withhold any sums required to be withheld and paid over to the state board of equalization under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

History: En. Sec. 9, Ch. 208, L. 1959.

84-4903.10. **Rights of nonresident.** No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state board of equalization under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

History: En. Sec. 10, Ch. 208, L. 1959.

84-4903.11. **Nonresident ad valorem taxpayers—list—duty of county assessor.** It shall be the duty of the county assessor of every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state board of equalization after the completion of the roll on the second Monday in July but not later than September thirtieth of each year.

History: En. Sec. 11, Ch. 208, L. 1959.

84-4903.12. **List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.** It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state board of equalization with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list shall be mailed to the state board of equalization not later than the tenth day of the month following.

History: En. Sec. 12, Ch. 208, L. 1959.

84-4903.13. **Rules and regulations.** The state board of equalization is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act.

History: En. Sec. 13, Ch. 208, L. 1959.

Separability Clause

Section 14 of Ch. 208, Laws 1959 read "If any portion, section, subsection, paragraph, sentence, clause or phrase of this act is for any reason held to be unconstitutional which [such] decision shall not affect the remainder of the act."

84-4905. (2295.5) **Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of a state, territory, county or municipality;

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government.

(b) Dividends from capital stock of national banks located within the state of Montana.

(c) All benefits received under the federal employees retirement act not in excess of thirty-six hundred dollars ($3600).

(d) All benefits paid under the Montana teachers retirement act which are specified as exempt from taxation by section 75-2713, R. C. M. 1947.

(e) All benefits paid under the Montana public employees act which are specified as exempt from taxation by section 68-1303, R. C. M. 1947.

(f) All benefits paid under the Montana highway patrol retirement act which are specified as exempt from taxation by section 31-221, R. C. M. 1947.

(g) Montana income tax refunds or credits thereof.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect, but with respect to which the election provided for under section 84-1501.2, R. C. M. 1947, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distribution from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

History: En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965.

Amendments

The 1963 amendment added the clause now constituting paragraph (2) (c).

The 1965 amendment divided the former text into subsections (1) and (2); made several minor changes in phraseology and format; substituted paragraph (1) (a) for "interest on all state, county and municipal bonds"; added paragraph (1) (b); substituted paragraph (2) (a) for "(a) Interest on United States obligations"; substituted paragraph (2) (b) for "(b) Dividends received from stock held in national banks when such banks have their situs in Montana"; added paragraphs (d), (e), (f), and (g) to subsection (2); and added subsection (3).

DECISIONS UNDER FORMER LAW

Constitutionality

This section, before the 1955 amendment, was not unconstitutional as taxing something which was not income or taxing accretion in capital asset items. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228, 231.

Breeding Animals Not a Capital Asset

In 1951 no preferential treatment was accorded by any state statute to gains from the sale or exchange of breeding animals or any other property held for productive use in a trade or business. (Sec. 1, Ch. 148, Laws 1935, R. C. M. 1947, 84-4934, Repealed by Sec. 15, Ch. 260, Laws 1955.) In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 596.

Under the former statute requiring that the final closing return of a decedent be made on an inventory basis the same as fixed for inheritance tax purposes, Sec. 1, Ch. 167, Laws 1947, unsold breeding animals valued in inventory were not to be treated as a capital asset but were to be treated as property held for sale in computing taxable income. In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 596.

Not Retrospective

In the absence of any language in the 1955 Act warranting a retrospective application the court could not decide a 1951 tax case in accordance with federal statutes and decisions. In re Armstrong's Estate, 133 M 328, 323 P 2d 595, 597.

Purpose of Section

In enacting this section, before the 1955 amendment, the legislature was seeking tax equality. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 230.

Valuation of Closing Inventory

Valuation of closing inventory of estate of decedent under this section, before the 1955 amendment, by three unbiased appraisers was required by sections 91-2201, 91-2202. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

84-4906. (2295.6) **Deductions allowed in computing net income.**

References

Cited in State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 231.

84-4907. (2295.7) **Nonresident taxpayers.** In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the state board of equalization.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be restricted to those directly connected with the production of Montana income. A temporary resident shall be allowed those deductions allowed a resident to the extent that

such deductions were actually incurred or expended in the state of Montana during the course of his residency.

History: En. Sec. 7, Ch. 181, L. 1933; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965.

Amendments

The 1963 amendment substituted "the entire amount of adjusted gross income" near the beginning of the section for "only the adjusted gross income"; inserted "income from" before "annuities" in the first sentence of the first paragraph; made a minor change in phraseology in the latter part of the first sentence of the first paragraph; added the second sentence to the first paragraph; and substituted "prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income" at the end of the second paragraph for "allowed only if and to the extent that they are connected with income arising from sources within the state, and with reference to which a nonresident taxpayer is taxable under this act; and the proper apportionment and allocation of the deductions with respect to sources of income within and without this state shall be determined under rules and regulations to be prescribed by the state board of equalization."

The 1965 amendment substituted "restricted to those directly connected with the production of Montana income" for "prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income" at the end of the first sentence of the second paragraph; and added the second sentence to the second paragraph.

Effective Dates

Section 2 of Ch. 237, Laws 1963 read "This act is effective as to taxable years ending on and after December 31, 1963."

Section 2 of Ch. 270, Laws 1965 read "This act is effective as to taxable years ending on and after December 31, 1965."

References

Cited in State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228.

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the World War I Bonus Law, Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the board, in the same manner as other income tax refund claims are paid.

History: En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965.

Amendments

The 1957 amendment inserted the words "under the Korean Bonus Law and the" and deleted the words "pursuant to Initiative No. 54, more commonly known as the" which appeared before the words "Veterans' Bonus Law" and deleted the words "the effective date of which was December 6, 1950," which appeared after the words "Veterans' Bonus Law."

The 1965 amendment inserted "World War I Bonus Law" near the beginning of the section.

Repealing Clause

Section 2 of Ch. 4, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 4, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved January 28, 1965.

84-4910. (2295.10) **Exemptions.** (a) Allowance of Personal Exemption. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and Spouse. An exemption of six hundred dollars ($600.00) for the taxpayer; and an additional exemption of six hundred

dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred dollars ($600.00) for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars ($600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred dollars ($600.00) for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than six hundred dollars ($600.00), or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) years at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term "student" means an individual who dur-

ing each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins.

(A) Is a full time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or

(10) An individual who

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section:

(1) The terms "brother" and "sister" include a brother or sister by the half blood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(h) Determination of Marital Status. For purposes of this part

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption deduction in the case of a nonresident taxpayer

(1) The exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

History: En. Sec. 10, Ch. 181, L. 1933; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963.

Amendments

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

The 1959 amendment, in the heading for subd. (a), substituted "personal exemption" for "deductions"; in subd. (b) deleted the words "if a separate or joint return is made by the taxpayer" which appeared after the words "spouse of the taxpayer"; in subds. (c)(2) and (d)(2) deleted the words "if a separate return is made by the taxpayer" which appeared in each instance after the words "spouse of the taxpayer"; in subd. (d)(2) deleted the words "has no gross income" which appeared before the words "is not a dependent" and added all of subd. (i).

The 1963 amendment inserted "if a separate return is made by the taxpayer, and" in subd. (b), subd. (c) (2), and subd. (d) (2); inserted "has no gross income and" in subd. (b), subd. (c) (2), and subd. (d) (2); inserted "deduction" after "exemption" in subd. (i) and (i) (1); and made minor changes in phraseology and paragraphing.

Repealing Clause

Section 2 of Ch. 233, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 233, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-4911. (2295.11) **Income tax involving partnership — partnership statements required.** Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

History: En. Sec. 11, Ch. 181, L. 1933; amd. Sec. 5, Ch. 260, L. 1955; amd. Sec. 4, Ch. 253, L. 1959.

Amendment

The 1959 amendment substituted the present last sentence for two sentences which read "Taxpayers who are members of partnerships may be required by the department to make a return stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as provided in computing the net income of individuals."

84-4914. (2295.14) **Returns and payment of tax—penalty and interest —refunds—credits.** (1) Every single individual and every married individual filing a separate return, having a gross income for the taxable year of six hundred dollars ($600.00) or over and married individuals filing a joint return having a combined gross income for the taxable year of

twelve hundred dollars ($1,200.00) or over shall be liable for a return to be filed on such forms and according to such rules and regulations as the board of equalization may prescribe.

(2) In accordance with instructions set forth by the board, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939, and 84-4943 as amended shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943 as amended and/or any payment made by reason of an estimated tax return provided for in section 84-4939 as amended, provided however, the tax so computed is greater by one dollar ($1.00) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar ($1.00) the amount of the income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the board shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of six per centum (6%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars ($2.00). Interest will be computed at the rate of six per centum (6%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six per centum (6%) per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963.

Amendments

The 1957 amendment designated the former section as subsection (1); reduced the minimum amounts requiring the filing of returns from $1,000 to $600 for single persons, from $2,000 to $1,200 for married persons, and from $2,500 to $1,200 gross income; substituted "shall be liable for an income tax return, to be filed on such forms and according to instructions set forth by the board" at the end of the first sentence of subsection (1) for "shall make a return stating specifically the items of his gross income and the deductions and credits allowed by this act"; deleted from the first paragraph of subsection (1) a second sentence, for text of which see parent volume; and added new subsections (2), (3), and (4) (now subsections (4), (5), and (6)).

The 1959 amendment substituted "taxpayer" for "person" in three places in subsection (1) now subsections (1) and (2); substituted "gross income" for "net income" near the beginning of subsection (1); and deleted the words "or a gross income for the taxable year of twelve hundred dollars ($1,200.00) or over, regardless of the amount of his net income" which followed "head of a family" in subsection (1).

The 1963 amendment rewrote the former first paragraph of subsection (1); inserted a new subsection (2); designated the former second paragraph of subsection (1) as subsection (3); redesignated former subsections (2), (3), and (4) as (4), (5), and (6); substituted "six per centum (6%) per annum" for "one per centum (1%) per month" in the first sentence of the first paragraph and the second sentence of the second paragraph of present subsection (6); and inserted "(as distinguished from the due date as it may have been extended)" near the end of the second paragraph of present subsection (6).

84-4915. (2295.15) **Exemption allowed nonresident—effect of changing resident status.** If a taxpayer changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, during the taxable year, he shall file a return covering the fraction of the year during which he was a resident. The exemptions provided in section 84-4910 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state; abandoning his residence in the state and establishing a residence elsewhere, must file a return on the fractional basis. If he obtains employment outside the state, without abandoning his Montana residence then income from such employment is taxable in Montana.

History: En. Sec. 15, Ch. 181, L. 1933; amd. Sec. 9, Ch. 260, L. 1955; amd. Sec. 6, Ch. 253, L. 1959.

Amendment

The 1959 amendment in the second sentence substituted "on the ratio the Montana adjusted gross income bears to federal adjusted gross income" for "according to time in this state."

84-4919. (2295.19) **Time for filing—affidavit—forms.**

Cross-Reference

Certified copies of returns, secs. 84-732 to 84-735.

References

Cited or applied in Stewart v. State, 135 M 323, 340 P 2d 151, 152.

84-4920. (2295.20) **Revision of return—time for determining tax, etc.**

Construction Prior to Amendment

The provision of this section, before the 1955 amendment, commanding a particular act to be done for the protection of the taxpayer, viz., assessment within three years, must be construed in favor of the taxpayer. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 224.

This section, before the 1955 amendment did not constitute a statute of limitations, but rather a limitation upon the authority of the state board of equalization to reassess returns after the expiration of three years from the date the return is made. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 226.

Limitation on Reassessment

Although this section does not constitute a statute of limitations, it is a limitation upon the authority of the board of equalization to reassess returns after the expiration of three years from the date the return was filed. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

84-4922. (2295.22) **Revision—application—hearing—adjustment.** If an application for revision be filed with the board by a taxpayer within five (5) years from the original due date of the return the board shall grant a hearing thereon, and if it is made to appear upon any such hearing by evidence submitted to it or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the board shall resettle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of its determination thereon to the taxpayer.

History: En. Sec. 22, Ch. 181, L. 1933; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963.

Amendment

The 1963 amendment extended the filing period from three to five years after the due date of the return; and deleted the words "or if the tax of such taxpayer has been recomputed, then from the time of such recomputation" which appeared after "due date of the return."

Filing of Claim

Respondent paid additional tax under protest on June 12, 1953. Within the two years granted by this section, he applied for a revision, filing claim on July 24, 1954, setting forth the contended invalidity of the assessment. The claim was filed on a form provided by the board of equalization for refund of tax illegally collected. This was a sufficient compliance with the statute. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

84-4923. (2295.23) **Repealed.**

Repeal

This section (Sec. 23, Ch. 181, L. 1933; amd. Sec. 2, Ch. 58, L. 1955), relating to review of board's findings on application for revision, was repealed by Sec. 2, Ch. 212, Laws 1957.

84-4923.1. Review by court. The determination of the state board of equalization may be reviewed in the district court for Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state board of equalization within six (6) months after the receipt of notice of the decision of the state board of equalization. Upon the serving of summons upon the state board of equalization as in civil action, the cause shall proceed as other civil cases. Service upon the state board of equalization may be made by serving one copy upon the secretary of the state board of equalization or one copy upon the chairman of the state board of equalization. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957.

Title of Act

An act providing for review by the court of any determination of the board of equalization in respect to income taxes and repealing section 84-4923, Revised Codes of Montana, 1947, and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 212, Laws 1957 repealed section 84-4923 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict therewith.

DECISIONS UNDER FORMER LAW

Review of Reassessment

Where board of equalization rejected claim of taxpayer, on August 18, 1954, for return of illegally collected tax, it constituted the determination of the board upon the application for revision made by respondent and was reviewable by district court under Sec. 23, Ch. 181, Laws 1933, where respondent applied for writ of certiorari on September 11, 1954, within the 30 day limitation provided in section 23. State ex rel. Conn v. Robinson, 133 M 549, 327 P 2d 390, 391.

84-4924. (2295.24) **Penalties for violations of act.** (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income or pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to five (5) per centum thereof, but not less than two dollars ($2.00), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of six per centum (6%) per annum shall be added to the tax for the entire period it remains unpaid.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 24, Ch. 181, L. 1933; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963.

Amendment

The 1963 amendment substituted the latter part of subsection (1), beginning with the words "but not less than two dollars", for "but such additional amount shall in no case be less than two dollars ($2.00), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid."

Effective Date

Section 4 of Ch. 201, Laws 1963 read "This act is effective as to taxable years ending on and after December 31, 1962."

Constitutionality

The double penalty imposed under subd. (2) of this section, before the 1955 amendment, did not violate sections 20, 27, article III, of the Montana Constitution as an excessive fine or the taking of property without due process of law. State ex rel. Hardy v. State Board of Equalization, 133 M 43, 319 P 2d 1061, 1063, 1065.

Inadvertent Failure to Pay when Filing Return

The provision of this section, prior to the 1955 amendment, that any person failing to pay tax on due date was allowed 60 days in which to pay tax with only a 5% penalty did not prevent assessment of the 100% penalty after the termination of such period, notwithstanding the fact that the taxpayer failed to include payment due to mistake, inadvertence, and excusable neglect. Stewart v. State, 135 M 323, 340 P 2d 151.

84-4925. (2295.25) **Repealed.**

Repeal

This section (Sec. 25, Ch. 181, L. 1933; amd. Sec. 1, Ch. 78, L. 1951), relating to payment, penalty, interest, and refund of excess payment of tax, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4928. (2295.26) **Levy upon and sale of property, etc.**

References

Cited or applied in Stewart v. State, 135 M 323, 340 P 2d 151, 154.

84-4937. **Credit allowed resident taxpayers for income taxes imposed by foreign states.** Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient;

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this act;

(3) The allowable credit shall be computed by formula to be prescribed by the board.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

Severability Clause

Section 8 of Ch. 253, Laws 1959 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, clauses or parts be held unconstitutional or void the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 9 of Ch. 253, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 10 of Ch. 253, Laws 1959 read "The provisions of this act shall apply to taxable years ending after June 30, 1959."

84-4943. Deduction and withholding of tax from wages—amount. Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the board. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

Repealing Clause

Section 4 of Ch. 227, Laws 1957 read "That section 84-4925 of the Revised Codes of Montana, 1947, as amended by section 1 of chapter 78 of the Laws of 1951, section 84-4944 of the Revised Codes of Montana, 1947, being section 3 of chapter 246 of the Laws of 1955, section 84-4949 of the Revised Codes of Montana, 1947, being section 3 of chapter 246 of the Laws of 1955, section 84-4952 of the Revised Codes of Montana, 1947, being section 11 of chapter 246 of the Laws of 1955, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 5 of Ch. 227, Laws 1957 read "This act shall be effective as to all taxable periods ending on or after December 31, 1957, whether on the calendar or fiscal year basis."

84-4944. Repealed.

Repeal

This section (Sec. 3, Ch. 246, L. 1955), relating to the adjustment and amount of wages exempt, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4949. Repealed.

Repeal

This section (Sec. 8, Ch. 246, L. 1955), relating to the short form return, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4952. Repealed.

Repeal

This section (Sec. 11, Ch. 246, L. 1955), relating to including withholding tax deductions in gross income, was repealed by Sec. 4, Ch. 227, Laws 1957.

84-4953. Repealed.

Repeal

This section (Sec. 12, Ch. 246, L. 1955), relating to the income tax withholding fund, was repealed by Sec. 8, Ch. 126, Laws 1963.

84-4956. Credits and refunds. If the board of equalization discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state board of equalization shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the board disapproves a claim for refund, review of the determination of the board may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar ($1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963.

Title of Act

An act relating to credits and refunds; providing for the period within which

claim must be made; providing for a hearing upon the claim and for review by the court, by the taxpayer and containing a repealing clause.

Amendment

The 1963 amendment substituted the first paragraph for a paragraph reading, "Where there has been an overpayment of any income tax imposed by this chapter, the amount of such overpayment shall be credited against any income tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer"; inserted the words "Effective with taxable years ending on or after December 31, 1959" at the beginning of the second paragraph; substituted "five (5) years from the date prescribed by statute for filing the return" in the first sentence of the second paragraph for "three (3) years from the time the tax was paid"; added to the first sentence of the second paragraph the words "or the board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof"; substituted "upon proper application by the taxpayer" for "before the state board of equalization" at the end of the third sentence of the second paragraph; made minor changes in phraseology; and added the third paragraph.

Repealing Clause

Section 2 of Ch. 138, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-4957. Repealed.

Repeal

This section (Sec. 1, Ch. 211, L. 1957), relating to the income tax refund account, was repealed by Sec. 8, Ch. 126, Laws 1963.

84-4958. Release of lien or partial discharge of property. (1) The board of equalization shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, chapter 49, R. C. M. 1947, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The board of equalization may issue a certificate of release if it determines that the lien is unenforceable.

(2) The board of equalization may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, chapter 49, R. C. M. 1947, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the board of equalization, of the interest of the state of Montana in the part to be discharged; or

(c) The board of equalization determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 130, L. 1965.

Title of Act

An act providing for release and discharge of liens imposed with respect to any tax due under Title 84, chapter 49, R. C. M. 1947.

CHAPTER 52—LIVESTOCK TAXATION

Section 84-5211. Limitation of levies—livestock moneys.
84-5212. Use of moneys arising from taxes prescribed in preceding section.
84-5214. Levy for bounty moneys—use of proceeds.

84-5202. (2069) **Assessment of migratory livestock.**

Enclosure

The fencing of a 2,000 acre tract does not constitute an "enclosure" within the meaning of this section. O'Brien v. Ross, — M —, 394 P 2d 1013, 1014.

Purpose

The thrust of this section is directed at livestock operations involving pasturing or grazing livestock in counties other than the one in which the owner resides. O'Brien v. Ross, — M —, 394 P 2d 1013, 1015.

Seizure and Sale

Where nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960, county had a lien for the tax under sections 84-3807 and 84-3808 and properly seized and noticed up for sale on May 7, 1963, as the lien was not limited to 1960 cattle by section 84-4202, as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, — M —, 394 P 2d 1013, 1015.

Situs for Taxation

Cattle of nonresident taxpayer grazing on lands other than in the home county of the taxpayer at the time fixed by law for assessment were taxable in that other county in accordance with this section although the acreage upon which such cattle grazed was enclosed by a fence. O'Brien v. Ross, — M —, 394 P 2d 1013, 1015.

84-5211. (2078) **Limitation of levies—livestock moneys.** The amount of such levy shall not in any event exceed one mill upon the assessed valuation of sheep and one and one-half mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the livestock commission of Montana, including salaries, office expense, detective expense, expense of prosecution, travel, and all incidental expense, and a separate levy of not exceeding one and one-half mills on all livestock for the use of the livestock sanitary board to be placed in the earmarked revenue fund for the payment of indemnity for animals slaughtered, and for salaries and expenses incurred in investigating, controlling and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance; provided further that the state treasurer and state controller, at the written request of the livestock sanitary board shall set aside in a separate account in the earmarked revenue fund such moneys as may be available and requested, which moneys shall be expended only when the livestock sanitary board determines that a livestock disease emergency exists requiring its expenditure, and they shall then be expended for such purposes as the livestock sanitary board may order and direct.

History: En. Sec. 3, Ch. 127, L. 1915; re-en. Sec. 2078, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1929; amd. Sec. 109, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first part of the section for "what shall be known as the state livestock sanitary board fund"; substituted "state controller" in the proviso for "state auditor"; substituted "in a separate account in the earmarked revenue fund such moneys" in the proviso for "and transfer from the state livestock sanitary board fund to what shall be known as the state livestock sanitary board emergency fund such funds"; and substituted "moneys" and "they" in the latter part of the proviso for "funds" and "it."

84-5212. (2079) **Use of moneys arising from taxes prescribed in preceding section.** The money received from the tax levied on sheep, as provided in the first part of the preceding section, shall be placed to the credit of the earmarked revenue fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expense of the livestock com-

mission, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the earmarked revenue fund, to be used for like purposes for said livestock commission. The moneys received from the tax levied by the second division of the preceding section, shall be placed in the earmarked revenue fund, to be used by the livestock sanitary board for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith.

History: En. Sec. 4, Ch. 127, L. 1915; re-en. Sec. 2079, R. C. M. 1921; amd. Sec. 89, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first part of the first sentence for "the sheep inspection and indemnity fund", in the latter part of the first sentence for "the stock inspection and detective fund", and in the second sentence for "a fund to be known as the state livestock sanitary board fund"; substituted "livestock commission" in the first part of the first sentence for "board of sheep commissioners" and in the latter part of the first sentence for "board of stock commissioners"; and substituted "the livestock sanitary board" in the second sentence for "said board."

84-5214. (2081) **Levy for bounty moneys—use of proceeds.** The state board of equalization of the state of Montana shall, under the authority of section 9, article XII of the constitution of Montana, and hereby, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in co-operation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R. C. M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the third sentence for "the state bounty fund"; deleted "and thereafter to the state board of examiners" after "regularly presented to the Montana livestock commission" in the third sentence; substituted "thereafter approved by said commission" in the third sentence for "approved, in turn, by each said commission and said board"; substituted "All such moneys" at the beginning of the fourth sentence for "All the moneys in said state bounty fund"; deleted "against the bounty fund" after "No claims" at the beginning of the last sentence; substituted "available for such purposes" in the last sentence for "in the fund"; and substituted "moneys" for "fund" at the end of the section.

CHAPTER 54—MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section 84-5403. Net proceeds—how computed.
84-5408. Transmission of net proceeds to county assessor.
84-5409. Taxation and payment on royalty interests.

84-5401. (2088) Taxation of mines.

Net Proceeds

In determining the net proceeds under the provisions of sections 84-5402 and 84-5403, the gross product received under section 84-5403 is the amount paid to the producer. Hence, where producer received price of $63 a ton from general services administration while the New York market price was only $35 a ton; the total amount received by the producer is to be used. The difference between the market price and the price received is not to be considered a government bonus or subsidy as the producer was not required to sell to the government. Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, overruling Klies v. Linnane, 117 M 59, 156 P 2d 183.

Operation of One or More Mines

The considerations of paramount importance in determining whether an operation constitutes one mine, or more than one, are ownership, location, integration of mining system, and single management. United States Gypsum Co. v. Schreiner, 135 M 312, 340 P 2d 548.

84-5402. (2089) Net proceeds tax—statement of yield.

References

Cited or applied in Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, 978.

84-5403. (2090) **Net proceeds—how computed.** The state board of equalization shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.

2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine, except as hereinafter provided.

4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.

5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.

6. All moneys actually expended for transporting the ores, and mineral products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.

7. All moneys expended for fire insurance and workmen's compensation insurance, and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

In computing the deductions allowable for repairs, improvements and betterments to the mine, the state board of equalization shall compute and allow ten per cent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county assessor of the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 2, Ch. 237, L. 1921; re-en Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959.

Amendment

The 1959 amendment, in the first paragraph, substituted the words "covered by the statement" for the words "preceding the first day of January"; added the words "except as hereinafter provided" at the end of subd. 3; inserted the word "actually" in subd. 6; added the two paragraphs next to the last paragraph; and inserted the words "and except as hereinbefore provided in this section" in the last paragraph.

Gross Product—What Included In

Where producer received price of $63 a ton from general services administration while market price was only $35 a ton the difference between the market price and the price received is not to be considered a government bonus or subsidy since the producer was free to sell to anyone and the entire price was to be included in determining the value of the gross product. Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, overruling Klies v. Linnane, 117 M 59, 156 P 2d 183.

Operation of One or More Mines

Where the evidence as to ownership, location, integration of mining system, and single management pointed to one mining operation for the purpose of net proceeds taxation, extension of operations to a second ridge of two parallel ridges did not constitute opening of second mine and expenditures for the extension were tax deductible in connection with the first operation. United States Gypsum Co. v. Schreiner, 135 M 312, 340 P 2d 548.

84-5407. (2090.4) **False or fraudulent reports, procedure in case of.**

References

Cited or applied in Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, 981.

84-5408. (2091) **Transmission of net proceeds to county assessor.** On or before the first day of July in each year the state board of equalization shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by such state board of equalization. The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding, or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In determining net proceeds of each individual year for averaging to determine valuation for purposes of taxation, the actual annual net proceeds as defined in section 84-5403 of the Revised Codes of Montana, 1947, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year. The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.

2. The description and location of the mine.

3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.

4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.

5. The net proceeds, in dollars and cents, of such mine or mining claims during the years, to be determined as provided in the preceding section.

The form of said assessment roll shall be prescribed by the state board of equalization in conformity with the provisions of this act.

History: En. Sec. 3, Ch. 237, L. 1921; re-en. Sec. 2091, R. C. M. 1921; amd. Sec. 5, Ch. 188, L. 1935; amd. Sec. 1, Ch. 67, L. 1945; amd. Sec. 1, Ch. 181, L. 1959.

Amendment

The 1959 amendment divided into two sentences what was formerly the first sentence of the section and inserted as new matter between the two the present second, third, fourth, and fifth sentences.

Repealing Clause

Section 2 of Ch. 181, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 181, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

Constitutionality

"Average of annual net proceeds," as provided by this section, as amended in 1959, is not the same as the "annual net proceeds" provided in article XII, section 3, of the Montana constitution and therefore the law is unconstitutional. State ex rel. Roberts v. State Board of Equalization, 138 M 138, 355 P 2d 150, 152.

References

Cited or applied in Minerals Engineering Co. v. Greene, 131 M 119, 308 P 2d 977, 978.

84-5409. (2091.1) Taxation and payment on royalty interests. At the time of transmitting net proceeds assessments the state board of equalization shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

History: En. Sec. 6, Ch. 188, L. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959.

Amendment

The 1959 amendment substituted the word "assessor" for "clerk" each time it appears; substituted "fifteenth day of September" for "twentieth day of August"; deleted the former 2nd, 3rd, and 4th sentences, for text of which see parent volume and changed the form of this section. What are now the last two sentences was formerly the second paragraph.

Repealing Clause

Section 4 of Ch. 257, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 257, Laws 1959 read "The provisions of this act shall apply to the returns required to be filed in 1959 and for each year thereafter."

Section 5 of Ch. 257, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 13, 1959.

CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

Section 84-5601. Definitions.
84-5602. Distributors' and dealers' license—application—fees.
84-5606. The tax.
84-5606.1. Legislative intent.
84-5607. Affixing of insignia.
84-5608. Insignia purchased at discount.
84-5609. Use of tax stamping meters.
84-5621. Clerical and field assistants.

84-5601. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(a) The word "board" shall mean the state board of equalization of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization, or association however formed.

(c) The word "insignia" shall mean the impression or mark approved by the state board of equalization, under the provisions of this act.

(d) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to distributors and retailers in original cases.

(e) The word "distributor" shall mean any person engaged in the business of producing or manufacturing cigarettes or importing any thereof into this state, for purpose of distribution or sale.

(f) The words "licensed distributor" shall mean distributor duly licensed under the provisions of this act.

(g) The word "dealer" shall mean any person other than a distributor, who is engaged in the business of selling cigarettes at retail, including persons who sell cigarettes at retail through cigarette vending machines.

(h) The words "licensed dealer" shall mean any person other than a distributor, who is duly licensed under the provisions of this act.

(i) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, gift, barter or exchange.

History: En. Sec. 1, Ch. 289, L. 1947; amd. Sec. 1, Ch. 18, L. 1957.

Amendment

The 1957 amendment deleted former subd. (c) for text of which see parent volume and relettered subds. (d) to (j) as subds. (c) to (i); in subd. (c) [former (d)] deleted the words "used in lieu of stamps" which appeared after the word "equalization" and in subd. (g) [former (h)] substituted the words "including persons who sell cigarettes at retail through" for the words "and shall also mean."

84-5602. Distributors' and dealers' license—application—fees. Every such distributor or dealer shall secure a license from the board before engaging in the business of distributor or dealer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by each distributor or dealer within the state of Montana. Cigarette vending machines shall not be considered to be places of business but a separate application and a separate license shall be required for each cigarette vending machine owned, controlled or operated within the state of Montana. Application for such license shall be made on forms prescribed by the board, which shall state the name and address of the applicant, the name, address and place of business to be licensed, the type of business, or such other information as the board may require for the proper administration of this act. Each application for a distributor's license shall be accompanied by a fee of fifteen dollars ($15.00). Each application for a dealer's license shall be accompanied by a fee of five dollars ($5.00). No dealer shall be granted a distributor's license except a dealer who also performs, in the usual course of business, a distributor's function. Each license so issued shall be permanently and prominently displayed on the premises or cigarette vending machine covered by the license. Distributors and dealers licensed under this act may buy, sell or have in their possession, only cigarettes which have the insignia provided for in this act on each individual package. The insignia provided for in

this act shall be sold to, and affixed by, licensed distributors and licensed dealers only. A distributor's license shall not authorize the holder thereof to make sales of cigarettes at retail in less than carton lots.

History: En. Sec. 2, Ch. 289, L. 1947; amd. Sec. 2, Ch. 18, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted "the business of distributor or dealer" for "such business" and deleted the words "or continuing to engage therein, after July 1, 1947" which appeared at the end of the sentence; in the second sentence substituted "each distributor or dealer" for "such person"; added the third sentence; in the fourth sentence substituted "or" for "and"; in the seventh sentence substituted "dealer" for "retailer" and deleted the words "or wholesaler's" which appeared between the words "distributors" and "function"; in the eighth sentence inserted the words "or cigarette vending machine"; in the ninth sentence substituted "only cigarettes which have the insignia" for "only such cigarettes upon which has the stamp or insignia" in the tenth sentence deleted the words "stamps or" which appeared before the word "insignia" and substituted "licensed dealers" for "retailers"; from the eleventh sentence deleted a proviso clause which read "provided, however, before said distributor shall make any such sale at retail, the stamp or insignia shall be affixed to each individual package" and also deleted a former twelfth sentence which read "Each cigarette vending machine shall be licensed at a particular place of business, provided that only one machine is to be licensed at a particular place of business where the licensee has more than one machine in operation."

84-5606. The tax. Subdivision—(1) All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.

Subdivision—(2) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to-wit: Five cents (5¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then five cents (5¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

Subdivision—(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty

(20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I.

Subdivision—(4) From and after the effective date of this amendatory act of the thirty-eighth legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to-wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies, and the payment of the interest thereon, and the payment of the expenses of administration of this amendatory act.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 97, and once by Ch. 270. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

The amendment by Ch. 18, Laws 1957 in the last paragraph substituted "dealer" for "retailer" in the first sentence; substituted "insignia" for "stamps" in the same sentence; deleted a former second sentence in that paragraph which read "Said stamps shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may

prescribe"; substituted "insignia affixed" for "stamp to affix," substituted "insignia" for "stamp" before the words "will be destroyed" in the third sentence and substituted "act" for "law" after the words "provided for in this" in the fourth sentence.

The amendment by Ch. 44, Laws 1957 in the second paragraph of subdivision (2) (now subdivision (3)) inserted "under the authority of said Initiative No. 54 as hereby amended"; substituted "residents of Montana" for "residents of this state"; added "or in said Korean War" and added subdivision (3) (now subdivision (4)).

The amendment by Ch. 222, Laws 1957 in subdivision (1) (now subdivision (2)) increased the tax from 2¢ to 5¢ and in the last paragraph, carried the same change as made by Ch. 18 in the first sentence; reinstated the second sentence, which had been deleted by Ch. 18; substituted "insignia" for "stamps" in that sentence and substituted "insignia" for "stamp" in the third sentence.

Chapter 97, Laws 1963, incorporated all of the 1957 amendments; inserted a new subdivision (1); redesignated former subdivisions (1) to (3) as (2) to (4), respectively; and changed internal references accordingly.

Chapter 270, Laws 1963, added "or World War I" at the end of former Subdivision—(2) (now (3)); substituted "thirty-eighth legislative assembly" for "thirty-fifth legislative assembly" near the beginning of former Subdivision—(3) (now (4)); substituted "amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies" for "this amendatory act of said thirty-fifth legislative assembly" near the end of the second paragraph of former Subdivision—(3) (now (4)); and made minor changes in phraseology.

Tobacco Tax Referendum

Chapter 264, Laws 1965, provided for submission to the voters at the 1966 general election of a question as to whether a three-cent tobacco tax should be levied for constructing and remodeling state buildings. The act read: "An act submitting to the electorate at the November 1966 general election the question of whether or not a tobacco tax should be levied for the purpose of financing the cost of constructing and remodeling state buildings.

"Section 1. Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1966, the three cent (3¢) per package cigarette tax authorized by section 84-5606, subdivision 3 and 4, R. C. M. 1947, and a tax in an amount to be fixed by law on all other tobacco products may be levied and collected for the purpose of financing the cost of constructing and remodeling state buildings.

"Section 2. This referendum shall be submitted to the electors on an official ballot which shall contain the title of this act and the number of the referendum. The question shall be presented in substantially the following form:

☐ For Referendum Measure No. —.
☐ Against Referendum Measure No. —."

Cross-Reference

Pledge of cigarette tax proceeds to sinking fund for long-range building program bonds, sec. 79-2203.

INITIATIVE MEASURE NO. 54 AMENDMENTS

Initiative Measure No. 54 (Laws 1951, pps. 781 to 790) was amended by chapter 44 and chapter 45 of the 1957 Session, by chapter 13 and chapter 49 of the 1959 Session, and by chapter 192 and chapter 270 of the 1963 Session: These acts read as follows:

Chapter 44, Laws 1957; amd. chapter 13, Laws 1959; amd. chapter 192, Laws 1963

An act to amend Initiative Measure No. 54, adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, by amending section 1 thereof, defining terms; by amending section 2 thereof so as to provide for the payment of an honorarium to persons serving on active duty during the Korean War; authorizing issuance of six million dollars ($6,000,000.00) of limited obligation bonds or so much thereof as may be necessary to supplement the moneys now in the "War Veterans' Compensation Fund" sufficiently to make the payments provided for in said Initiative No. 54 as hereby amended; by adding thereto a new section to be numbered 14-A, providing for the deposit of moneys from the sale of such additional bonds in said "War Veterans' Compensation Fund"; amending section 16 of said Initiative No. 54, and amending sections 84-5606 and 84-5621, Revised Codes of Montana, 1947, as amended, by providing an additional excise tax upon the sale of cigarettes in the state of Montana; said moneys to be deposited in the "War Veterans' Compensation Bond Retirement Fund No. 2" for the payment of such additional bonds and interest thereon and creating such fund; making

an appropriation of the moneys now remaining in the "War Veterans' Compensation Fund" not needed for the payment of the honorarium to persons who served in World War II and of the funds derived from the sale of said bonds; by adding a section to be numbered 17-A, providing that nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54; providing that said Initiative No. 54 as by this act amended shall be construed as though it had been originally passed with the amendments made by this amendatory act, if such construction does not conflict with express provisions of this amendatory act; providing limits of time within which claims under subdivisions (b), (c), and (d) of section 2 of said Initiative No. 54, as said section is by this amendatory act amended, under section 3 of said Initiative No. 54 as by this amendatory act amended, or under section 5 of said Initiative No. 54 as by this amendatory act amended, may be filed; making incidental amendments of the sections of said Initiative No. 54 in this amendatory act specifically referred to, germane to the general purpose of this amendatory act and designed to facilitate the administration thereof; providing that if any part of this amendatory act shall be held invalid, such invalidity shall not affect the other provisions of this act; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

WHEREAS, the Korean War began before the submission of Initiative No. 54, ADOPTED by the vote of the people of Montana at the regular General Election of November 7, 1950, but too late to permit the inclusion in the provisions of said act of persons in the military service during said Korean War; and

WHEREAS, it was the intent of the people of Montana to recognize by the honorarium provided in said Initiative No. 54 all residents of Montana rendering military service on behalf of said state in the then emergency; and

WHEREAS, said Korean War was a recrudescence of said World War II and properly includable within the provisions of said Initiative No. 54,

Section 1. That section 1 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 1. As used in this law.

(a) The term "World War II" means the period between December 7, 1941, and September 2, 1945, both dates inclusive.

(b) The term "Korean War" means the period between June 25, 1950, and October 16, 1953, both dates inclusive.

(c) The term "Korean Theatre" means the Korean Peninsula and the waters surrounding said Peninsula, the islands of Japan and other territory upon which personnel of the United Nations were based during said Korean War or operating in the presence of the Korean Conflict.

(d) The term "Military Forces" as applied to World War II means the Army, the Navy, the Marine Corps, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, all Air Forces, and all other groups and services in and forming a part of the Armed Services under the control and subject to the discipline of the War Department or the Navy Department of the United States, and engaged in the prosecution of World War II.

(e) The term "Military Forces" as applied to the Korean War means the Army, the Navy, the Marine Corps, the Air Force, the Coast Guard, the Construction Battalions, the WAC, the WAVES, the SPARS, the WMR, the Nursing Services, and all other groups and services forming a part of the Armed Services under the control and subject to the discipline of the Department of Defense of the United States and on active duty during the period of said Korean War. The term "Department of Defense" as herein used means all of the branches of the Armed Services of the United States acting under the unified control of the Department of Defense.

(f) The term "Military Service" means service on active duty by any person in any of the military forces at any time during World War II or during said Korean War.

(g) The term "Person" includes female as well as male.

(h) The term "Serviceman" means a person who is entitled to receive payments under section 2 of this law.

(i) The term "Resident of Montana" means a person who was in military service and who at the time of his or her entry into such military service had his or her home in Montana. A person who, on December 7, 1941, or in the case of the Korean War, on June 25, 1950, was serving on active duty in any of the armed services of the United States and who at the time of his or her then last entry into such service made his or her home in Montana and who was in the military service at some time in World War II, or during the Korean War, shall be deemed a resident of Montana, unless he or she, after such last entry, and before entry into military service in either such war, had established and was then maintaining a home in some other state; and

any such serviceman whose parents or surviving parent then resided in Montana, shall be deemed a resident of Montana.

(j) The term "Continental Limits of the United States" means the area of the 48 states and the District of Columbia, to high water mark on its water boundaries.

Section 2. That section 2 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 2. In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War II, and in the prosecution of said Korean War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to,

(a) Each resident of Montana who was in military service as a member of any branch of the military forces of the United States at some time during World War II an honorarium, or adjusted compensation, in the sum of ten dollars ($10.00) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars ($15.00) for each month and major fraction of a month for such service outside the continental limits of the United States:

(b) Each resident of Montana who was in military service at some time during the Korean War, and during part or all of the period of such service was in said Korean Theatre, an honorarium, or adjusted compensation, in the sum of fifteen dollars ($15.00) for each month and major fraction of a month of such service in said Korean Theatre, and ten dollars ($10.00) for each month and major fraction of a month of such service outside said Korean Theatre, provided further that any serviceman who, while on active duty in said Korean Theatre during said Korean War, shall have suffered disease or injury from any cause whatsoever, including injury from exposure to weather and/or weather conditions, and in line of duty, and is hospitalized therefor by any of the armed services of the United States he or she shall be deemed, for the purpose of this amendatory act, to have been in military service in said Korean Theatre as long as he or she shall be or have been continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, and wherever situated, subject to the limitation in this subdivision hereinafter specified; provided further that any serviceman who shall have been taken prisoner by the enemy in said Korean Theatre, and who shall have been classified by any of said armed services under the Department of Defense as a prisoner of war, shall receive the sum of fifteen dollars ($15.00) for each month and major fraction of a month during which he or she was so held by the enemy as such prisoner; but any such prisoner of war shall be paid not less than three hundred dollars ($300.00); and provided, finally, that no serviceman shall be paid, under any of the provisions of this subdivision, more than six hundred dollars ($600.00);

(c) Each resident of Montana who was in military service during said Korean War, but whose military service was wholly outside said Korean Theatre, an honorarium, or adjusted compensation of ten dollars ($10.00) for each month and major fraction of a month of such service;

(d) The surviving spouse, children, or parents, as the case may be, and as in this amendatory act hereinafter provided, of any Korean serviceman who died in line of duty while in such military service during either World War II or said Korean War, or who shall have died prior to payment under this section from any cause attributable to his military service, in line of duty, as shown by the records of the United States Veterans' Administration, shall be paid the amount to which such deceased serviceman would have been entitled had he received payment of said honorarium, or if such amount is less than five hundred dollars ($500.00), then such surviving spouse, children or parents, as the case may be, shall be paid the sum of five hundred dollars ($500.00), and no more;

(e) Provided that there shall be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in either of said Wars, no more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory; and provided further that no payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 1. That section 3, chapter 44, Laws of 1957, be, and the same is hereby amended to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment under this law, the amount specified in section 2 of this amendatory act, shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to the child or children who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children, then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this paragraph provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person. [As amended by Sec. 1, Ch. 13, Laws 1959.]

[The remainder of Ch. 13, Laws 1959 read as follows:

"Section 2. Nothing in this act shall be deemed to amend or in any way alter the provisions of sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 or 13 of chapter 44, Laws of 1957.

"Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 4. This act shall be in full force and effect from and after its passage and approval." Approved February 4, 1959.]

Section 4. That section 5 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 5. In the case of minors or incompetent persons, claims shall be filed by and payments made to his or her guardian, his or her custodian duly appointed by the Veterans' Administration, or his or her legal fiduciary.

Section 5. That section 12 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 12. For the purpose of providing for the payment of the honorarium, or adjusted compensation, herein provided for and for paying the expenses of administration of this law, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of twenty-two million dollars ($22,000,000.00) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner in this law provided; shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax in this law provided for and place the proceeds thereof in the War Veterans' Compensation Bond Retirement Fund, until all bonds issued hereunder, and the interest accruing thereon, shall have been paid; shall draw interest at the rate of not more than four and one-half per cent (4½%) per annum, payable semi-annually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity; whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds; and said board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semi-annually, which coupons shall be executed with facsimile signatures of all the members of said board of examiners, and the signing of such coupons with such facsimile signatures shall be recognized as sufficient execution of such coupons on behalf of the state of Montana. Provided, however, that if the moneys derived from said first issue of twenty-two million dollars ($22,000,000.00) of bonds as in this section above provided shall be insufficient to pay all claims heretofore filed with and heretofore or hereafter allowed by said board of examiners under the original provisions of said Initiative No. 54 as heretofore amended, and to pay all claims filed and allowed under this amendatory act, together with the expenses of administration of this amendatory act, there shall be issued and sold under the direction and supervision of the board of examiners of the state of Montana limited obligation bonds of the state of Montana in the further sum of six million dollars ($6,000,000.00) or in such sum within that amount

as may be necessary for such purposes. The issuance of such bonds shall be made in the same manner and such bonds shall be subject to the same limitations, restrictions, and provisions as apply to said original issue of twenty-two million dollars ($22,000,000.00), except that such bonds shall draw not more than four and one-half per cent (4½%) interest and shall be payable only out of a cigarette tax as hereinafter provided in this amendatory act.

Section 6. That there is hereby added to said Initiative No. 54 a new section to be numbered section 14-A, to read as follows:

Section 14-A. The money arising from the sale of such said additional bonds in the amount of six million dollars ($6,000,000.00) in this amendatory act above-provided for as may be sold as herein provided shall be deposited in the state treasury to the credit of the special fund created by said Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in said fund, after payment of all claims heretofore filed with and heretofore or hereafter allowed by the board of examiners under the original provisions of said Initiative No. 54, shall, together with such additional funds as may be derived from the sale of bonds under the said issue of six million dollars ($6,000,000.00) authorized by this amendatory act, be used to pay said honorarium granted by subdivisions (b), (c), and (d) of section 2 hereof, and by section 3 of said Initiative No. 54 as hereby amended, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is hereby appropriated from the War Veterans' Compensation Fund, in addition to the appropriation made by section 14 of said Initiative No. 54 as originally enacted, the moneys now remaining in said fund and not needed for the payment of the honorarium to persons who served in World War II, and the sum of six million dollars ($6,000,000.00), or so much thereof as may be necessary to pay said honorarium to the persons who served in the military forces in said Korean War.

Section 7. That section 16 of said Initiative No. 54 be, and the same is hereby amended to read as follows:

Section 16. That in addition to the aggregate excise tax upon cigarettes now provided for by section 16 of said Initiative Measure No. 54, there is hereby imposed a tax of one cent (1¢) on each package of cigarettes containing not more than twenty (20) cigarettes, and when a package shall contain more than twenty (20) cigarettes, then one cent (1¢) for each twenty (20) or fraction of twenty (20) cigarettes in such package. Such additional tax shall be collected at the same time and in the same manner as the tax levied and imposed by subdivision (2) of said section 16 of said Initiative Measure No. 54. For the purpose of giving full legal effect to said increase of said excise tax, section 84-5606 of said Title 84 and section 84-5621 of said Title 84 are hereby amended so as to read as follows:

Section 84-5606. [See section as set out above.]

Section 84-5621. [See section 84-5621.]

Section 8. There is hereby added to said Initiative No. 54 a new section to be numbered section 17-A to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000.00) of bonds heretofore sold under the authority of said Initiative Measure No. 54, or of the interest thereon, but the provision made by said Initiative for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Except where such construction would conflict with express provisions of this amendatory act, said Initiative No. 54 shall be construed as though the amendments made hereby had formed a part of said Initiative at the time of its adoption on November 7, 1950. Nothing herein contained is to be construed as extending the time of filing claims under said Initiative No. 54 as originally adopted nor as amended by chapter 123 of the Laws of the Thirty-third Session of the Montana Legislative Assembly, nor as authorizing any payments from said War Veterans' Compensation Fund except expenses of administration of said Initiative as hereby amended, of claims for the honorarium filed on or prior to January 1, 1954, and the expenses of administration in connection therewith, and of the payments provided for in subdivisions (b), (c) and (d), of section 2, and in sections 3 and 5, of said Initiative No. 54 as amended.

Section 10. Claims for benefits under the provisions of subdivisions (b), (c) and (d) of section 2 and/or under sections 3 and 5 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of six (6) years from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of six (6) years shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 11. If any provision contained in this amendatory act shall for any reason

be held invalid, such decision shall not invalidate the remaining provisions of this act.

Section 12. All acts or parts of acts in conflict herewith are hereby repealed.

Section 13. This act will take effect and be in full force and effect from and after its passage and approval. Approved February 26, 1957.

[The remainder of Ch. 192, Laws 1963, read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved March 7, 1963.]

Chapter 45, Laws 1957; amd. chapter 49, Laws 1959

An act to amend Initiative Measure No. 54 adopted by the vote of the legal electors of the state of Montana at the regular general election held in the state of Montana on November 7, 1950, as amended by chapter 123, Session Laws of 1953, relating to section 6 thereof, by providing a new date for applications for payment of the honorarium to be December 31, 1957, repealing all acts and parts of acts in conflict herewith, and containing an effective date.

Section 1. That section 6 of said Initiative No. 54 be, and the same is hereby amended so as to read as follows:

Section 6. All applications for the payment of the honorarium or adjusted compensation here provided for shall be filed with the board of examiners before the thirty-first day of December, 1959: and the filing of an application with a county clerk and recorder of any county of this state shall be deemed, for the purpose of this section, to have been filed with said board as of the date of filing with such clerk and recorder. Upon receiving any such application such clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon such application, over his signature and seal, and immediately transmit such application to the said board of examiners. Any filing with such board or with any such clerk and recorder within the time limited by this section shall be effective to preserve the rights of the applicant though such application as so filed shall be defective, provided defects therein are later corrected under reasonable rules to be adopted by said board.

[The remainder of Ch. 49, Laws 1959 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 26, 1959.]

Section 3. This act shall be in full force and effect upon its passage and approval. Approved February 26, 1957.

Chapter 270, Laws 1963

An act providing for payment of an honorarium for veterans of World War I from the proceeds of bonds to be retired with income from the cigarette tax; amending sections 3 and 17-A of Initiative No. 54 and sections 84-5606 and 84-5621, R.C.M. 1947; and repealing sections 1, 2 and 12 of Initiative No. 54.

Section 1. There is added a new section 1 to Initiative No. 54 to read as follows:

Section 1. As used in this law.

(a) The term "World War I" means the period between April 6, 1917, and May 11, 1919, both dates inclusive; except that for those persons assigned to duty with the American Expeditionary Forces serving in Siberia, the term World War I includes the period between April 6, 1917, and April 1, 1920, both dates inclusive.

(b) The term "military forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the construction battalions, all women's auxiliary corps, the nursing services, all air forces, and all other groups and services in and forming a part of the armed services under control and subject to the discipline of the war department or the navy department of the United States, and engaged in the prosecution of World War I.

(c) The term "military service" means service on active duty by any person in any of the military forces at any time during World War I.

(d) The term "person" includes female as well as male.

(e) The term "serviceman" means a person who is entitled to receive payments under section 2 of this law.

(f) The term "resident of Montana" means a person, or the parents or surviving parent of a person, who was in military service and who at the time of his entry into such military service had his home in Montana. A person who, on April 6, 1917, was in military service and who at the time of his last entry into such service made his home in Montana shall be deemed a resident of Montana, unless he, after such last entry, and before entry into military service in such war, had established and was then maintaining a home in some other state.

(g) The term "continental limits of the United States" means the area of the fifty (50) states and the District of Columbia, to high water mark on its water boundaries.

Section 2. There is added a new section 2 to Initiative No. 54 to read as follows:

Section 2. (1) In recognition and appreciation of the valor and devotion of the men and women who, by their military service, carried out and discharged the obligation of the state of Montana to contribute of its man power to the defense of this republic in World War I, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants, and there shall be paid to each resident of Montana who was in military service an honorarium, or adjusted compensation, in the sum of ten dollars ($10) for each month and major fraction of a month of such service within the continental limits of the United States, and the sum of fifteen dollars ($15) for each month and major fraction of a month for such service outside the continental limits of the United States.

(2) There shall not be paid to any resident of Montana who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in World War I, more than the excess, if any, of the aggregate amount to which such resident would be entitled hereunder, over and above the amount so received or to which he or she may be entitled from another such state or territory.

(3) No payment shall be made under this law to any person who was dishonorably discharged from such service and has not been by proper authority restored to an honorable status, nor to any person still in service who is in a dishonorable status.

Section 3. Section 3 of Initiative Measure No. 54 is amended to read as follows:

Section 3. In the case of the death of any such serviceman prior to payment under this law, the amount to which he was entitled shall be paid as follows:

(1) To his or her surviving spouse, provided such spouse, if a widow, has not remarried prior to making application for such payment, or

(2) If there is no surviving spouse, or if a widow and she is deceased or has remarried prior to making such application, then to any child or children under eighteen (18) years of age who shall be living when such payment is made, in equal shares if more than one, and all thereof if only one; or

(3) If there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children under eighteen (18) years of age, then such payment shall be made to the parents of the deceased, or if one of them shall be deceased, then the whole thereof to the parent who survives; or if both parents be deceased, then no payment shall be made.

(4) The payments in this section provided for shall be made only to the persons herein designated who shall be living at the time of payment, and no payment shall be made to the estate of any such person.

Section 4. There is added a new section 12 to Initiative No. 54 to read as follows:

Section 12. If the moneys derived from the issue of bonds authorized by section 12 of Initiative No. 54 as originally enacted and subsequently amended for the purpose of providing for the payment of the honorarium, or adjusted compensation to veterans of World War II and the Korean War and for paying the expenses of administration of this law shall be insufficient for the payment of the honorarium or adjusted compensation herein provided, there shall be issued and sold under the direction and supervision of the board of examiners, limited obligations bonds of the state of Montana in the sum of two million five hundred thousand dollars ($2,500,000) or in such sum within that amount as may be necessary for such purposes. Such bonds shall distinctly state that they are not and shall never be or become a general obligation of the state of Montana, but shall be payable only from the proceeds of a cigarette tax in the manner provided for by this law. The bonds shall contain the pledge of the state of Montana to continue to levy and collect the cigarette tax provided for in this law and to apply the proceeds thereof to the retirement of all bonds issued hereunder, and the interest accruing thereon. The bonds shall draw interest at the rate of not more than four and one half per cent (4½%) per annum, payable semiannually; but in all other respects the board of examiners is hereby empowered and directed to fix the terms thereof, as to dates of maturity, the time after which and the terms and conditions upon which they may be called for payment prior to maturity, whether payable to bearer or registered, whether serial bonds or otherwise, and to prescribe the general form of such bonds. The board of examiners is hereby empowered to do whatever is lawful and necessary in the issuance and payment of such bonds and the interest thereon and the administration of this law. The attorney general shall assist the board in the preparation of the form of such bonds. Such bonds shall be signed by the members of the board of examiners and be issued under the great seal of the state of Montana, and a record of all such bonds issued and sold shall be made in the office of the state treasurer. Said bonds shall have interest coupons attached thereto, covering the interest due semiannually,

which shall be executed with facsimile signatures of all the members of said board of examiners. The signing of such coupons with facsimile signatures shall be recognized as sufficient execution of the coupons on behalf of the state of Montana.

Section 5. There is added a new section to Initiative No. 54 to be numbered section 14-B, to read as follows:

Section 14-B. The money arising from the sale of such additional bonds in the amount of two million five hundred thousand dollars ($2,500,000) authorized by this amendatory act shall be deposited in the state treasury to the credit of the special fund created by Initiative No. 54 and known as the "War Veterans' Compensation Fund," and the moneys now in such fund, after payment of all claims allowed by the board of examiners under the provision of Initiative No. 54 as originally enacted and subsequently amended, shall, together with such additional funds as may be derived from the sale of bonds under the issue authorized by this amendatory act, be used to pay the honoraria granted by sections 2 and 3 of this act, and the expense of administration of this amendatory act. For the purpose of carrying out the provisions of this amendatory act there is appropriated from the War Veterans' Compensation Fund the moneys now remaining in the fund and not needed for the payment of the honoraria to persons who served in World War II or the Korean War, and the sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary to pay honoraria to the persons who served in the military forces in World War I.

Section 6. Section 84-5606, R. C. M. 1947, is amended to read as follows:

Section 84-5606. [See section as set out above.]

Section 7. Section 84-5621, R. C. M. 1947, is amended to read as follows: [See section 84-5621.]

Section 8. Section 17-A of Initiative No. 54 is amended to read as follows:

Section 17-A. Nothing in this amendatory act shall be construed as impairing the security of the twenty-two million dollars ($22,000,000) of bonds or of the six million dollars ($6,000,000) of bonds heretofore sold under the authority of said Initiative Measure No. 54, as amended, or of the interest thereon, but the provision made by said Initiative, as amended, for the payment of said bonds and the interest thereon shall remain inviolate.

Section 9. Claims for benefits under the provisions of sections 2 and 3 of Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of three (3) years after the January first next following the date of the passage and approval of this amendatory act, however, such three (3) year period shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

Section 10. Sections 1, 2 and 12 of Initiative No. 54, as amended, are repealed.

Section 11. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Submission to Voters

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under the constitution of Montana. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915, 916.

84-5606.1. Legislative intent. The Legislative Assembly hereby declares that its intent in enacting Section 1 of this act is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the Federal Internal Revenue Code of 1954 in computing their taxable income.

History: En. Sec. 2, Ch. 97, L. 1963.

84-5607. Affixing of insignia. Insignia shall be affixed to packages of cigarettes only by licensed distributors and dealers. Provided, however, the provisions of this act shall not apply to public warehouses acting as agents of manufacturers.

History: En. Sec. 7, Ch. 289, L. 1947; amd. Sec. 4, Ch. 18, L. 1957.

Amendment

The 1957 amendment completely rewrote this section. For section prior to amendment see parent volume.

84-5608. Insignia purchased at discount. Every licensed distributor and dealer will be entitled to purchase said insignia at a discount of eight per cent (8%) of their face value, upon payment therefor. This discount is not applicable to that portion of the tax collected for any veterans' honorarium.

History: En. Sec. 8, Ch. 289, L. 1947; amd. Sec. 5, Ch. 18, L. 1957; amd. Sec. 2, Ch. 222, L. 1957.

Compiler's Note

This section was amended twice in the 1957 Session. Once by chapter 18 and once by chapter 222. Neither law contained a specific effective date. Chapter 18 was signed by the Governor February 18 while chapter 222 was signed March 12. As the acts are not in conflict with each other the Compiler has made a composite section. For specific changes see Amendments below.

Amendments

The 1957 amendment by Ch. 18 substituted "dealer will" for "retailer shall" and "insignia" for "stamps" in the first sentence and added the second sentence.

The 1957 amendment by Ch. 222 made the same changes as the amendment by Ch. 18 and also decreased the discount from 10% to 8%.

Repealing Clause

Section 3 of Ch. 222, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-5609. Use of tax stamping meters. The board may authorize any manufacturer, distributor or dealer of cigarettes to use a tax stamping meter machine with which to place an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the board. Each individual package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax stamping meter machine and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any distributor or dealer licensed under this act. The board shall supervise and check the operation of such tax stamping meter machines. The operator of such machine, before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall collect from said operator the amount of money proper for said setting, less a discount of ten per cent (10%) on that portion of the tax not being collected for any veterans' honorarium. The county treasurer shall immediately report to the board on forms prescribed by it, the name of the operator and the number of packages for which said meter was set and shall immediately forward to the board the amount collected from said operator.

History: En. Sec. 9, Ch. 289, L. 1947; amd. Sec. 6, Ch. 18, L. 1957.

Amendment

The 1957 amendment in the first sentence substituted "dealer" for "retailer" and deleted the words "in lieu of said stamps" which appeared at the end of this sentence; in the fifth sentence inserted the words "before using the same"; added the sixth sentence; in the seventh sentence substituted "shall immediately forward to the board the amount collected from said operator" for "the distributor or retailer, using such tax stamping meter machine, within ten (10) days from the first day of the month of the following month, shall remit to the board the amount of the

tax due on the packages of cigarettes for which said tax stamping meter machine was set to stamp for the preceding month" and deleted a former last paragraph which read "That any distributor or retailer using such tax stamping meter machine shall be required to furnish a surety bond, to be approved by the board, in the sum of five thousand dollars ($5,000.00) conditioned for the payment of the tax due on packages of cigarettes stamped by said tax stamping meter machines."

Separability Clause

Section 7 of Ch. 18, Laws 1957 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 8 of Ch. 18, Laws 1957 repealed all acts and parts of acts in conflict therewith.

84-5617. Appeals from decision of the board.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

84-5621. Clerical and field assistants. The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606 of the Montana Revised Codes of 1947, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by Chapter 44, Laws of 1957 is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two accounts in the sinking fund established by this section.

History: En. Sec. 21, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 209, Ch. 147, L. 1963; amd. Sec. 7, Ch. 270, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 270. Chapter 270 contained some but not all of the changes made by Ch. 147; other than this, neither amendatory act men-

tioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

Amendments

The 1957 amendment added a third paragraph which now appears, as amended in 1963, as the second paragraph.

Chapter 147, Laws 1963, substituted "and credited to a subfund in the sinking fund" after "state treasurer" in the third sentence of the first paragraph for "and credited to a special fund known as the War Veterans' Compensation Bond Retirement Fund, which fund shall be kept segregated from all money in the state treasury"; deleted the former second paragraph, for text of which see parent volume; substituted "and credited to a subfund in the sinking fund, which" after "state treasurer" in the present second paragraph for "and credited to a special fund to be known as the War Veterans' Compensation Bond Retirement Fund No. 2, which fund shall be kept segregated from all other money in the state treasury and"; and added the third paragraph.

Chapter 270, Laws 1963, deleted the words "credited to a special fund known as the War Veterans' Compensation Bond Retirement Fund, which fund shall be" which appeared after "state treasurer and" in the third sentence of the first paragraph; inserted "World War I or" near the end of the first paragraph; deleted the former second paragraph, for text of which see parent volume; deleted the words "credited to a special fund to be known as the War Veterans' Compensation Bond Retirement Fund No. 2, which fund shall be" which followed "state treasurer and" in the present second paragraph; and substituted "bonds" for "twenty-two million dollars ($22,000,000.00)" before "authorized by said Initiative Measure No. 54" in the present second paragraph.

References

Cited in Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 909.

CHAPTER 62—MINES OR WELLS PRODUCING NATURAL GAS OR PETROLEUM—NET PROCEEDS TAX

Section 84-6208. County assessors to compute taxes.

84-6208. County assessors to compute taxes. Immediately after the county board of equalization has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963.

Amendment

The 1963 amendment inserted "or producer" near the beginning of the second paragraph; substituted "same" for "the taxes on royalties" in the first part of the second paragraph; and substituted the proviso to the second paragraph for a proviso reading, "provided, however, that after payment of such tax on royalties such operator may recover or withhold from any proceeds of royalty interest, either in kind or in money, coming into his hands, the amount of any tax paid by him upon such royalty or royalty interest."

Effective Date

Section 2 of Ch. 80, Laws of 1963, provided that the 1963 amendment should apply to returns required to be filed in 1963 and each year thereafter.

Section 4 of Ch. 80, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 26, 1963.

Repealing Clause

Section 3 of Ch. 80, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 65—LICENSE TAXES—RACING ASSOCIATIONS

Section 84-6502. Rate of tax—payment—disposition.
84-6503. Penalty.
84-6504. Fair boards exempt.

84-6501. Repealed.

Repeal

This section (Sec. 1, Ch. 57, L. 1961), relating to reports to the county treasurer on racing meets held pursuant to former section 94-2425, was repealed by Sec. 15, Ch. 196, Laws 1965.

84-6502. Rate of tax — payment — disposition. Within twenty (20) days of the time of said racing event, said racing association shall pay to the county treasurer of the county where said racing event was held a license tax on the amount of bets, wagers or entrance fees handled daily at the following rates, to-wit:

(1) Up to ten thousand dollars ($10,000.00) one-fourth (¼) of one (1) per centum.

(2) On the next five thousand dollars ($5,000.00) one-half (½) of one (1) per centum.

(3) On the next five thousand dollars ($5,000.00) three-fourths (¾) of one (1) per centum.

(4) On the next five thousand dollars ($5,000.00) one (1) per centum.

(5) On the next ten thousand dollars ($10,000.00) two (2) per centum.

(6) On any excess over thirty-five thousand dollars ($35,000.00) three (3) per centum.

Subject to a minimum tax of twenty-five dollars ($25.00) per racing day.

Seventy-five (75) per cent of said tax shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection and be placed in the general fund of the state of Montana; the balance of said tax shall be retained by the respective county for its poor fund.

History: En. Sec. 2, Ch. 57, L. 1961.

Title of Act

An act to provide for the payment of license tax for any racing association taking advantage of the provisions of section 94-2425, Revised Codes of Montana, 1947; providing for collection of said license tax and for the maintaining of records by said racing association; designating the county treasurer as the officer to be charged with the responsibility of collecting said license tax and supervising said records to be furnished by said racing association; directing that said license tax shall be divided between the county and the general fund of the state of Montana; providing a penalty; excepting from this act, county fair boards; and providing for an effective date of this act.

84-6503. Penalty. Each club, partnership, individual, corporation or association, who fails, neglects or refuses to make and file the report or

reports required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to or in connection with such report or reports, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), and each and every day that such violation shall continue shall constitute a separate and distinct offense.

History: En. Sec. 3, Ch. 57, L. 1961.

84-6504. Fair boards exempt. All county fair boards are expressly excepted from the provisions of this act.

History: En. Sec. 4, Ch. 57, L. 1961.

Effective Date

Section 5 of Ch. 57, Laws 1961 read "This act shall be effective from and after the fifteenth (15th) day of April, 1961."

CHAPTER 66—PROPERTY TAX ON HOUSE TRAILERS

Section 84-6601. Trailers subject to act.
84-6602. Display of property tax sticker required—issuance and contents of sticker.
84-6603. Tax receipt to be produced if trailer stopped on highway.
84-6604. Penalty for failure to display sticker or produce receipt.
84-6605. Act restricted to trailers subject to taxation.

84-6601. Trailers subject to act. As used in this act:

"House trailer" means; (1) A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) whether mobile or stationary; or

(2) A trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, whether mobile or stationary.

History: En. Sec. 1, Ch. 275, L. 1965.

Title of Act

An act to require owners of house trailers to display property tax paid stickers on their house trailers and to require persons transporting house trailers to display property tax paid stickers and to produce property tax paid receipts for state law or weight enforcement officials.

84-6602. Display of property tax sticker required—issuance and contents of sticker. The owner of a house trailer must display on the back of his house trailer or in another conspicuous place a property tax paid sticker prescribed by the supervisor of the Montana highway patrol with the approval of the registrar of motor vehicles. The registrar shall produce the stickers for each county. The stickers shall contain the identifying number of the county and consecutive numbers starting with the number one (1) in each county. The sticker shall be issued by the county treasurer at the time of payment of property taxes. The sticker shall be displayed from fifteen (15) days after the due date for personal property taxes of one year to the due date for personal property taxes of the next year.

History: En. Sec. 2, Ch. 275, L. 1965.

84-6603. Tax receipt to be produced if trailer stopped on highway. If stopped on a highway or at a state vehicle weight station by a state highway patrolman or state vehicle weight station attendant, a person transporting a house trailer must produce, if requested, the property tax paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed.

History: En. Sec. 3, Ch. 275, L. 1965.

84-6604. Penalty for failure to display sticker or produce receipt. The failure to display a property tax paid sticker or the failure to produce a property tax paid receipt from fifteen (15) days after the due date for personal property taxes of one year to the due date for personal property taxes of the next year shall constitute a misdemeanor punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment.

History: En. Sec. 4, Ch. 275, L. 1965.

84-6605. Act restricted to trailers subject to taxation. The provisions of this act shall apply only to those house trailers, as defined in this act, subject to assessment and taxation under sections 84-406, R. C. M. 1947, as amended and section 84-6008, R. C. M. 1947, as amended.

History: En. Sec. 5, Ch. 275, L. 1965.

REVISED CODES OF MONTANA

VOLUME 6

Part 1

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 1) THROUGH VOLUME 397, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 6 (Part 1)

For index see pocket supplement to Replacement Volume 9

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CHAPTER 3—TRUSTEE'S OBLIGATIONS—SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

Section 86-327. Fiduciary permitted to hold property received though not qualified investment.

86-327. Fiduciary permitted to hold property received though not qualified investment. In the absence of express provisions to the contrary in the trust instrument, any fiduciary may hold during the life of the trust all securities or other property, real or personal, received into or acquired by the trust from any source, excepting such as are purchased by the fiduciary in administering the trust, even though such securities or other property are not qualified investments.

History: En. Sec. 1, Ch. 66, L. 1965.

Title of Act

An act relating to the retention by trustees of securities and other property received into the trust.

CHAPTER 5—TRUSTS FOR BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES

Section 86-511. Compensation of trustee.

86-511. (7918) **Compensation of trustee.** When a declaration of trust, created by will or otherwise, is silent upon the subject of or the rate or amount of compensation, the trustee is entitled to such compensation as may be reasonable under the circumstances.

History: En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1965. Cal. Civ. C. Sec. 2274. Field Civ. C. Sec. 1206.

Amendment

The 1965 amendment inserted "created by will or otherwise"; inserted "or the rate or amount of" before "compensation"; substituted "such compensation as may be reasonable under the circumstances" for "the same compensation as an executor"; and deleted second and third sentences, for text of which see parent volume.

TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-106, 87-148.

CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

Section 87-106. Disqualification for benefits.
87-148. Definitions.

87-106. Disqualification for benefits. An individual shall be disqualified for benefits—

(a) to (g). * * * [Same as parent volume.]

(h) Where retired and entitled to receive retirement compensation in excess of one hundred dollars ($100.00) per calendar month paid in whole or in part from funds furnished by an employing unit, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under section 87-103 or 87-105. No benefit payments or amounts paid any retired individual shall ever be charged under section 87-109 against any employing unit from whose employment the individual is retired and entitled to receive retirement compensation, on account of that particular employment, unless and until the commission shall determine (upon hearing, if requested by employer, and after at least ten (10) days' written notice of such hearing to said employer) that the individual was not retired by the employer acting in good faith. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(i) and (j). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965.

Amendment

The 1965 amendment inserted "in excess of one hundred dollars ($100.00) per calendar month" in the first sentence of subd. (h); substituted "retired individual" for "individual after such retirement" near the beginning of the present third sentence of subd. (h); inserted "and entitled to receive retirement compensation," following "individual is retired" in the present third sentence of subd. (h); and made a minor change in punctuation.

87-148. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) to (i). * * * [Same as parent volume.]

(j) (1) to (5). * * * [Same as parent volume.]

(6) The term "employment" shall not include:

(A) to (I). * * * [Same as parent volume.]

(J) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(k) to (m). * * * [Same as parent volume.]

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965.

Amendment

The 1965 amendment inserted "securities" in subd. (j) (6) (J).

Effective Date

Section 3 of Ch. 84, Laws 1965 read "This act shall be in full force and effect from and after April 1, 1965."

TITLE 87A—UNIFORM COMMERCIAL CODE

Chapter 9. Secured transactions—sales of accounts, contract rights and chattel paper, 87A-9-302.1 to 87A-9-302.3.

CHAPTER 3—COMMERCIAL PAPER

Part 1—Short Title, Form and Interpretation

87A-3-112. Terms and omissions not affecting negotiability.

Cross-Reference

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CHAPTER 9—SECURED TRANSACTIONS—SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Part 3. Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

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87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest.
87A-9-302.3. Continued effectiveness of certain laws.

Part 3—Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

87A-9-302.1. Financing statements of transmitting utilities—definitions. As used in this act,

(a) "Transmitting Utility" means any corporation or other business entity primarily engaged, pursuant to rights or franchises issued by and subject to the jurisdiction of a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam[,] gas or water.

(b) "Uniform Commercial Code" means Chapters 1 through 10 of Title 87A of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 76, L. 1965.

Compiler's Note

Although the title of Ch. 76, Laws 1965, referred to codification of this act at 87A-9-408, the act itself contained no directions as to compilation.

Title of Act

An act relating to the Uniform Commercial Code of Montana by adding a new section to be known and codified as section 87A-9-408, relating to the filing by certain public utilities of certain instruments required to be filed under the provisions of the Uniform Commercial Code; providing for a repealing clause; providing for a severability clause; and providing for an effective date.

87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest. Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), and 87A-9-402 of the Uniform Commercial Code,

(a) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility is in the office of the secretary of state;

(b) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required;

(c) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20 (c) of the Interstate Commerce Act or by filing a financing statement pursuant to the Uniform Commercial Code as provided in subsection (a).

History: En. Sec. 2, Ch. 76, L. 1965.

Compiler's Note

Filing provisions of Interstate Commerce Act, see 49 U. S. C., sec. 20c.

87A-9-302.3. Continued effectiveness of certain laws. Unless displaced by the specific provisions of this act, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this act.

History: En. Sec. 3, Ch. 76, L. 1965.

Repealing Clause

Section 4 of Ch. 76, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 5 of Ch. 76, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 76, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

TITLE 89—WATERS AND IRRIGATION

Chapter 1. Water conservation board, state, 89-102 to 89-103.8, 89-118.
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CHAPTER 1—WATER CONSERVATION BOARD, STATE

Section 89-102. Definitions.
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89-103.1. Director of water conservation board—appointment—qualifications.
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89-103.4. Powers of Carey Land Act board and state engineer transferred to water conservation board.
89-103.5. Records and property transferred to water conservation board.
89-103.6. Funds and appropriations transferred to water conservation board.
89-103.7. Yellowstone compact obligations unimpaired.
89-103.8. State obligations unimpaired.
89-118. Powers and duties of board—actions at law.

89-102. (349.2) **Definitions.** As used in this act, the following words and terms shall have the following meanings:

(a). * * * [Same as parent volume.]

(b) The word "works" shall be deemed to include all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with such works, and shall embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses and for fire protection.

(c) The term "cost of works" shall embrace the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for such construction, the cost of all water rights acquired or exercised by the board in connection with such works, the cost of all machinery and equipment, financing charges, interest

prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; provided, however, the board in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(d) The word "owner" shall include all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired.

(e) and (f). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; amd. Sec. 1, Ch. 163, L. 1965.

Amendment

The 1965 amendment inserted "waste canals, drainage canals, dikes" in paragraph (b); inserted "flood prevention, drainage, fish and wildlife, recreation" near the end of paragraph (b); substituted "industrial or other uses and for fire protection" at the end of paragraph (b) for "industrial and other uses for fire protection"; added the proviso at the end of paragraph (c); and inserted "drainage districts, flood control districts" in paragraph (d).

89-103. (349.3) State water conservation board—officers—meetings—quorum—employees—counsel—compensation. (1) There is hereby created a board to be known as the "state water conservation board," and by that name the board may sue and be sued, plead and be impleaded, and contract and be contracted with. The board shall consist of seven (7) members, including the governor and director who shall be members ex officio. The five (5) remaining members shall be qualified electors of the state and shall be appointed by the governor with the consent of the senate, and shall serve for a term of six (6) years, except that immediately after the effective date of this act the governor shall appoint two (2) members of the board whose term of office shall expire on the second Monday in January, 1967, another two (2) members of the board whose term of office shall expire on the second Monday in January, 1969, and one (1) member of the board whose term of office shall expire on the second Monday in January, 1971, and their successors shall be appointed for a term of six (6) years, except that any person appointed to fill a vacancy shall be eligible for reappointment. Any of the appointed members of the board may be removed by the governor at any time, and any vacancy caused by the death, removal, or resignation or disqualification of any appointed member shall be filled by appointment as hereinabove provided. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the second (2) Monday in January during the biennial session of the legislative assembly preceding the commencement of the term for which the appointment is made. Before entering upon the discharge of his duties, each appointed member

shall take, subscribe and file with the secretary of state the oath prescribed by the constitution.

(2) The governor shall be the chairman of the board and the vice-chairman shall be the secretary and treasurer of the board. The board shall maintain its principal office in the city of Helena and may maintain such branch offices as it may determine. It shall elect a vice-chairman at its first meeting who shall preside at all meetings of the board when the chairman thereof is absent. It may provide for the holding of regular meetings and may hold a special meeting for the transaction of any business which may properly come before the board at any time and at any place in the state upon the call of the chairman or the vice-chairman or any two (2) members, notice of which may be given by telegram or by depositing in the mails at least forty-eight (48) hours before the meeting; but no notice shall be necessary if at least four (4) members of the board shall be present. A majority in number of the members shall constitute a quorum and the affirmative or negative vote of four (4) members shall be necessary to bind the board.

(3) The board shall have and adopt a seal bearing its name, which seal shall be affixed to such records and other instruments as it may direct, and all courts shall take judicial notice of said seal. It is authorized to adopt from time to time, as necessary or expedient, suitable rules and regulations for the administration of this act. The attorney general shall act as legal adviser for the board and shall perform such legal services as the board may request; he shall receive his actual and necessary expenses when engaged in travel in the performance of such services. With his consent the board may employ additional legal counsel, and the board may also appoint such technical and other assistants and employees as may be necessary to enable it to perform its duties and carry out the purposes of this act, and may fix their compensation.

(4) Each appointed member of the board shall receive, as compensation for his services, the sum of twenty-five dollars ($25.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with actual traveling and maintenance expenses while away from his home in the performance of the duties of his office. All such compensation and expenses shall be paid solely from the funds provided under the authority of this act.

History: En. Sec. 3, Ch. 35, Ex. L. 1933; amd. Sec. 50, Ch. 177, L. 1965; amd. Sec. 1, Ch. 278, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 177 and once by Ch. 278. Neither amendment mentioned nor incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 177, Laws 1965, deleted "and secure such fidelity bonds as it may deem advisable" from the end of subsection (3).

Chapter 278, Laws 1965, increased the size of the board from five to seven and the number of appointive members from three to five; substituted the director for the state engineer as an ex officio member in the second sentence of subsection (1); inserted "with the consent of the senate" after "appointed by the governor" in the third sentence of subsection (1); substituted the portion of the third sentence of subsection (1) relating to appointment and terms of the first appointive members for provisions relating to appointive members whose terms expired

in 1935, 1937, and 1939; changed the number of votes required to bind the board, as specified in the final sentence of subsection (2) from three to four; increased the per diem rate of appointive members, as specified near the beginning of subsection (4), from $10 to $25; deleted from the end of subsection (4) a sentence reading, "The state engineer shall exercise such powers and perform such duties, in addition to his regular duties as state engineer and as the board shall prescribe, and may receive and be paid such additional salary for such additional duties as may be fixed by the board"; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 51 of Ch. 177, Laws 1965 read "Sections 3-407, 6-101, 6-102, 6-103, 6-104, 46-702, 66-810, 77-1004, 79-809, 82-404, 82-507, 82-1013, 82-1907, 82-2213, 92-106 and 92-107, R. C. M. 1947, are repealed."

89-103.1. Director of water conservation board—appointment—qualifications. There is hereby created the office of director of the state water conservation board who shall hereinafter be referred to as the "director." The director shall be appointed by the governor and shall serve at the pleasure of the governor, or until his successor shall be appointed and shall have qualified. No person shall be appointed director who has not such theoretical and such practical experience and skill as to qualify him to carry out the duties enjoined on him.

History: En. Sec. 1, Ch. 279, L. 1965.

Title of Act

An act creating the office of director of the state water conservation board; providing for the appointment of the director of the state water conservation board by the governor; providing for the term of office, duties of the director of the state water conservation board and limitations on such duties; and providing that nothing herein contained shall impair the lawful obligations of the state water conservation board.

89-103.2. Powers and duties of director. The director shall be the chief administrative office [officer] of the state water conservation board and shall perform and execute in the name of the board all ministerial acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, provided that the director shall not acquire by appropriation or otherwise any water right or interest therein and shall not acquire any real property or interest therein or mortgage or otherwise create a lien on the same or dispose of in any manner any water rights or property without specific authorization from and approval of said board. The director shall not construct or cause to be constructed or contract for the construction of any works or projects without specific authorization from and approval of said board.

History: En. Sec. 2, Ch. 279, L. 1965.

89-103.3. Salaries of director and employees of board. The salary of the director shall not exceed ten thousand dollars ($10,000). No salary of an employee of the board shall exceed the salary of the director.

History: En. Sec. 3, Ch. 279, L. 1965.

Saving Clause

Section 4 of Ch. 279, Laws 1965 read "Nothing in this act contained shall in any way impair any obligation of the state water conservation board lawfully entered into prior to the effective date of this act."

89-103.4. Powers of Carey Land Act board and state engineer transferred to water conservation board. Any duties, authority or obligation conferred or imposed by law on the Carey Land Act board or the state

engineer which are not in this act otherwise provided for are hereby transferred to and conferred and imposed on the state water conservation board.

History: En. Sec. 17, Ch. 280, L. 1965.

Title of Act

An act repealing sections 81-2006, 81-2008, 81-2010, 81-2012, R. C. M. 1947, thereby abolishing the office of state engineer; amending sections 81-2009, 81-2018, 82-3001, 89-702, 89-847, 89-848, 89-849, 89-851, 89-907, 89-908, 89-909, 89-912, 89-914, 89-1201, and 89-2911, R. C. M. 147, to provide for the transfer of certain duties of the state engineer to the state water conservation board; abolishing the Carey Land Act board; repealing sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947; providing for the transfer of the book and records and funds of the Carey Land Act board and the office of the state engineer to the state water conservation board; and providing that nothing in this act contained shall impair the obligations of the state of Montana under the Yellowstone River Compact or the obligations of the state of Montana, or the state water conservation board contracted prior to the effective date of this act.

89-103.5. Records and property transferred to water conservation board. Immediately following the effective date of this act all books, records, papers, material and supplies of all kinds and nature belonging to the Carey Land Act board, or in the office of the state engineer shall be transferred to the state water conservation board.

History: En. Sec. 18, Ch. 280, L. 1965.

89-103.6. Funds and appropriations transferred to water conservation board. On the effective date of this act all funds in the state treasury which were appropriated to or available to the Carey Land Act board or the state engineer shall become available to the state water conservation board to be used for the purpose of carrying out the purposes of this act and the state water conservation act.

History: En. Sec. 19, Ch. 280, L. 1965.

89-103.7. Yellowstone compact obligations unimpaired. Nothing in this act contained shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: En. Sec. 20, Ch. 280, L. 1965.

89-103.8. State obligations unimpaired. Nothing in this act contained shall impair any obligations of the state of Montana or the state water conservation board or the Carey Land Act board lawfully entering to [entered into], assumed or contracted for prior to the effective date of this act.

History: En. Sec. 21, Ch. 280, L. 1965.

Repealing Clause

Section 22 of Ch. 280, Laws 1965 read "Sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947, are repealed."

89-118. (349.15) **Powers and duties of board—actions at law.** (1). * * * [Same as parent volume.]

(2) The board shall have power to institute in any of the courts of this state, or in any other state, or in any of the federal courts of this

state or any other state, any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in all said courts institute, maintain, and prosecute to final determination any and all actions, suits and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for such reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water; and said board may join any and all owners of waters heretofore appropriated by any person, association or corporation from any of the streams of the state of Montana, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of any project so constructed by said board. All costs and expenses of such actions, suits or special proceedings shall be paid by said board out of funds provided under the authority of this act.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; amd. Sec. 43, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from subsection (2) a second paragraph reading, "The vice-chairman of the board, who shall act as secretary and treasurer, shall furnish a bond in the form and to the amount that shall be required by said board."

89-132. (349.29) **Powers of board to carry out policy of state, etc.**

Cross-Reference

Flood control projects of cities, towns and counties, secs. 89-3301 to 89-3313.

CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

Section 89-702. Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.

89-702. (2659) **Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.** No person, association, or corporation shall construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

Upon complaint on oath being made to the state water conservation board by three or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, it shall be the duty of the state water conservation board to forthwith examine, or cause to be examined, the said reservoir. If, upon such examination, the state water conservation board shall find that said reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall

notify the county attorney of the county in which the reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

In the event of either party being dissatisfied with the findings of the state water conservation board, it may take an appeal to the district court of the district wherein the reservoir is located, and said court shall hear and determine the matter at the earliest practical time, subject to the right of either party to take an appeal as in other civil cases; provided, that the judgment of the state water conservation board shall control until the final determination of the case.

History: Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R. C. M. 1921; amd. Sec. 5, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in five places; and made minor changes in phraseology.

CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

Section 89-847. Declaration of policy as to adjudication of waters of the state.
89-848. Water conservation board may bring action to adjudicate waters.
89-849. Appointment of referee to take testimony.
89-851. Duties of water conservation board—scope of examination of streams —surveys, reports, maps and plats may be introduced as evidence.

89-803. (7095) Point of diversion may be changed—change of use.

Clearing Irrigation Ditch

Servient landowners did not have a right to relief where changes caused by a dozer in clearing irrigation ditch would not be considered substantial changes or material alterations if they involved minor meandering along the course to account for topographical adjustments in the terrain. Shammel v. Vogl, — M —, 396 P 2d 103, 109.

89-810. (7100) Notice of appropriation.

Verification of Notice

Where verification of notice of appropriation was not completed as prescribed by this section, the notice on the record was not duly made, and was not entitled to prima facie evidentiary value under section 89-814. Shammel v. Vogl, — M —, 396 P 2d 103, 111.

89-814. (7104) Record prima facie evidence.

Defective Verification of Notice of Appropriation

Where verification of notice of appropriation was not completed as prescribed by section 89-810 the notice on the record was not duly made and was not entitled to prima facie evidentiary value under this section. Shammel v. Vogl, — M —, 396 P 2d 103, 111.

89-821, 89-822. (7111, 7112) Repealed.

Repeal

These sections (Secs. 10, 11, p. 58, L. 1870), relating to ditches, dikes, flumes and canals crossing highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

89-847. Declaration of policy as to adjudication of waters of the state. It is hereby declared to be the policy of this state and necessary for the welfare of the state and its citizens, that the waters of this state and especially interstate streams arising out of the state be investigated and adjudicated as soon as possible in order to protect the rights of

water users in this state and negotiate interstate compacts in relation thereto, and that the state water conservation board make investigations to secure necessary information and initiate and carry on actions therefor.

History: En. Sec. 1, Ch. 185, L. 1939; amd. Sec. 6, Ch. 280, L. 1965.

Amendment

The 1965 amendment deleted "and state engineer" after "state water conservation board" in the final clause.

89-848. Water conservation board may bring action to adjudicate waters. The state water conservation board is hereby authorized to bring action to adjudicate the waters of any stream or of any stream and its tributaries in any county traversed by said stream.

History: En. Sec. 2, Ch. 185, L. 1939; amd. Sec. 7, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "The state water conservation board" for "At the direction of the state water conservation board the state engineer" at the beginning of the section.

89-849. Appointment of referee to take testimony. In said actions the state water conservation board, or in any action pending for the adjudication of a water right, any party thereto, may make application to the court for the appointment of some competent person or persons to act as a referee or referees in said cause and to take testimony therein, and the court may appoint a referee or referees who shall proceed as herein set forth. In said order of reference the court may submit to said referee or referees any or all issues of fact in said cause.

History: En. Sec. 3, Ch. 185, L. 1939; amd. Sec. 8, Ch. 280, L. 1965.

Amendment

The 1965 amendment deleted "the state engineer, upon direction of" after "In said actions" at the beginning of the section.

89-851. Duties of water conservation board—scope of examination of streams—surveys, reports, maps and plats may be introduced as evidence. The state water conservation board shall either before or after the bringing of such action do all things, make all surveys, and perform all services required by said board in the securing of all necessary information and making same available to persons who may be interested therein including the courts of this state. The state water conservation board or some qualified employee may proceed to make an examination of any stream or streams as required by said board and the works diverting therefrom, said examination to include the measurement of the discharge of said stream and of the carrying capacity of the various ditches and canals, and examination of the irrigated lands and an approximate measurement of the lands irrigated from the various ditches and canals, and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested, which said observation and measurement shall be reduced to writing and made a matter of record, and it shall be the duty of the state water conservation board to make or cause to be made such maps or plats thereof as deemed necessary or shall be required. Any or all such

surveys, reports, maps and plats may be furnished to the judge of said court or the referee or referees mentioned herein and may be introduced as evidence in such proceedings; provided that the costs and expenses incurred in carrying out the provisions of this section shall be paid by the state water conservation board.

History: En. Sec. 5, Ch. 185, L. 1939; amd. Sec. 9, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" at the beginning of the section, at the beginning of the second sentence, and near the end of the second sentence; deleted "upon direction of the state water conservation board or upon the direction of the court" before "do all things" in the first sentence; substituted "persons" for "said board or others" near the end of the first sentence; substituted "employee" for "assistant" near the beginning of the second sentence; deleted "at his office" after "matter of record" in the second sentence; deleted "by said board, and to file with said board a detailed report and copies of such maps or plats covering such information so acquired by him" at the end of the second sentence; and made other minor changes in phraseology.

CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

Section 89-907. Filing written statement with water conservation board.
89-908. Duty to install weir or other measuring device.
89-909. Duty to measure water.
89-912. Water conservation board to make rules and regulations.
89-914. Water conservation board to make record available.

89-907. Filing written statement with water conservation board. Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the state water conservation board at its office in Helena, Montana, a written statement containing the following information:

(a) The name of the claimant and his address.

(b) Date of appropriation or the date when the water was first applied to a beneficial use.

(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or nonadjudicated stream, river or other source of water.

The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true.

History: En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in the first paragraph; and made a minor change in phraseology.

89-908. Duty to install weir or other measuring device. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the state water conservation board, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

History: En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in the second sentence; and made minor changes in phraseology.

89-909. Duty to measure water. It shall be the duty of every said claimant to measure all the water being diverted by him and to keep accurate records thereof on forms prescribed and furnished by the state water conservation board, and within fifteen days after the first day of November of each year to file such written records with the state water conservation board at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in two places; and made a minor change in phraseology.

89-912. Water conservation board to make rules and regulations. The state water conservation board shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer."

89-914. Water conservation board to make record available. The state water conservation board shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office,

all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from said interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer"; and made minor changes in phraseology.

CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS

89-1001. (7136) **Appointment of water commissioners—authority, etc.**

References

Allen v. Wampler, 143 M 486, 392 P 2d 82.

89-1015. (7150) **Complaint by dissatisfied user—procedure on.**

Purpose of Summary Proceeding

The district court had no authority in a proceeding under this section to approve a method of distribution which changed the point of diversion of water to a tract and changed the transportation ditch thereto, as the only function of the court in such a proceeding is to determine whether the water involved is being allocated in compliance with existing decrees and not to decree new water rights. Allen v. Wampler, 143 M 486, 392 P 2d 82.

CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION

Section 89-1201. Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of water conservation board—payment of expenses.
89-1208. Compensation of commissioners—penalty for interest in contract—bonds of commissioners.

89-1201. (7166) **Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of water conservation board—payment of expenses.** (1) and (2). * * * [Same as parent volume.]

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the state water conservation board on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the state water conservation board at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the state water conservation board in the investigation and report upon the proposed district shall be certified, with the report, and that said board shall, within a period of one hundred

twenty days from the filing of said petition with the state water conservation board, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: The first irrigation district act was Ch. 70, L. 1907, appearing as Secs. 2309-2402, Rev. C. 1907; repealed by Ch. 146, L. 1909.

This section en. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; amd. Sec. 15, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "the state water conservation board" or "said board" for "the state engineer" or "said engineer" in five places in subsection (3); deleted "(other than his salary)" which followed "incurred by the state engineer" near the beginning of the third sentence of subsection (3); and made other minor changes in phraseology in subsection (3).

89-1208. (7173) **Compensation of commissioners—penalty for interest in contract—bonds of commissioners.** The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed ten dollars ($10.00), per day for services, and, in addition thereto, their necessary expenses in attending meetings, or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem be approved by a unanimous vote of said board.

No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

The commissioners of said irrigation district shall each furnish a bond in the penal sum of twenty-five hundred dollars ($2500.00), with corporate surety conditioned for the faithful performance of their duties under this act, and the secretary shall furnish bond, with corporate surety, in the sum of one thousand dollars ($1000.00), conditioned for the faithful performance of his duties pursuant to this act, and for the proper and safekeeping of the records and documents of said district, in all cases where the obligations of said district, either existing or proposed, total two hundred and fifty thousand dollars ($250,000.00) or over.

In all other cases the board for said commissioners shall be in the sum of one thousand dollars ($1000.00).

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R. C. M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; amd. Sec. 1, Ch. 62, L. 1965.

Amendment

The 1965 amendment increased the daily compensation of the commissioners set forth in the first paragraph from $5 to $10.

CHAPTER 29—APPROPRIATION AND REGULATION OF GROUND WATER

Section 89-2911. Definitions.
89-2913. Filing—notice of appropriation—notice of completion.

89-2911. Definitions. As used in this act or regulations issued hereunder:

(a) to (e). * * * [Same as parent volume.]

(f) "Administrator" means the state water conservation board.

(g). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in paragraph (f).

89-2913. Filing—notice of appropriation—notice of completion. (a) to (g). * * * [Same as parent volume.]

(h) Persons who have put ground water to a beneficial use, including subirrigation or other natural process, prior to January 1, 1962, shall, within four (4) years after January 1, 1962, file a declaration in the office of the county clerk of the county in which the claimed right is situated. The declaration shall be made on a form known as a "declaration of vested ground water rights" and shall contain the following information: (1) the name and address of the claimant; (2) the beneficial use on which the claim is based; (3) the date or approximate date of the earliest beneficial use, and how continuous the use has been; (4) the amount of ground water claimed; (5) if the beneficial use has been for irrigation, the acreage and description of the lands to which such water has been applied and the name of the owner thereof; (6) the means of withdrawing such water from the ground and the location of each well or other means of withdrawal; (7) the date of commencement and completion of the construction of the well, wells or other works for withdrawal of ground water; (8) the depth of water table; (9) so far as it may be available, the type, size and depth of each well or the general specifications of any other works for the withdrawal of ground water; (10) the estimated amount of ground water withdrawn each year; (11) the log of the formations encountered in the drilling of each well; and (12) such other information of a similar nature as may be useful in carrying out the policy of this act.

The county clerk shall transmit copies to the office of the administrator, and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.

The declaration of vested ground water rights herein provided for shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed the water well log form, provided for in sections 1 and 2 of chapter 58, session laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

History: En. Sec. 3, Ch. 237, L. 1961; amd. Sec. 1, Ch. 21, L. 1965.

Amendment

The 1965 amendment substituted "four (4) years" for "two (2) years" in the first sentence of subsection (h).

CHAPTER 33—COUNTY AND MUNICIPAL PARTICIPATION IN FLOOD CONTROL

Section 89-3301. Participation in projects authorized—work which may be undertaken.
89-3302. Flood control activities declared public purpose.
89-3303. Acquisition of property—condemnation.
89-3304. Acceptance of federal aid—assumption of remaining cost.
89-3305. Right of way and construction costs.
89-3306. Federal direction of project.
89-3307. Contributions to right of way costs—agreement to maintain works.
89-3308. Street or road fund used.
89-3309. Levy of special assessment—apportionment to property benefited.
89-3310. Contracts for use of railroads and highways.
89-3311. Division of work into parts—separate proceedings for parts.
89-3312. Indebtedness and bonds—bond election—tax levy to pay indebtedness.
89-3313. Powers additional.

89-3301. Participation in projects authorized—work which may be undertaken. Cities, towns or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of a flood control or flood prevention project within the limits of such city, town or county for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from from the effects of flood water, whenever the establishment of such a flood control system shall, in the judgment of the city council, board of county commissioners or other governing body, be conducive to public convenience and welfare. Such cities, towns or counties may in accordance with the provisions of this act individually, jointly or severally, or in co-operation with the federal government or any department or agency thereof, and with each other, deepen, widen, straighten, alter, change, divert or otherwise improve the watercourses within or without their limits, by constructing levees, dikes, embankments, structures, impounding reservoirs or conduits, and improve, widen and establish streets, alleys and boulevards across and adjacent to the abandoned or new

channel or conduit and provide for the payment of the cost and maintenance of such flood control project under the terms of this act.

History: En. Sec. 1, Ch. 272, L. 1965.

Title of Act

An act authorizing cities, towns or counties to participate in flood control or flood prevention projects, to acquire property for such purpose, to accept federal aid for such purpose, providing for division of expenses in connection with such purpose, providing for assessments, permitting the cities, towns or counties to enter into certain contracts in pursuance of such purpose, authorizing the issuance of general obligation bonds for such purpose upon an election thereon, authorizing the state water conservation board to co-ordinate such activities when two or more counties are involved and for that purpose appropriating to the state water conservation board the sum of one dollar ($1) from the general fund of the state of Montana for the biennium commencing July 1, 1965, containing a repealing clause and containing a savings clause.

89-3302. Flood control activities declared public purpose. Such flood control activities, their establishment, construction, operation and maintenance as authorized by this act are declared to be for the protection of the tax base of the city, town or county, for the protection of public roads, lands and improvements, and for the protecton of the public health, sanitation, safety and general welfare.

History: En. Sec. 2, Ch. 272, L. 1965.

89-3303. Acquisition of property—condemnation. Cities, towns and counties may acquire by gift, purchase or condemn and appropriate private property within the limits of the flood control project, including the right to cross railroad right of way and property and highway right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this act, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted or otherwise improved under the provisions of this act. All provisions of the laws of the state of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof in and so far as applicable.

History: En. Sec. 3, Ch. 272, L. 1965.

89-3304. Acceptance of federal aid—assumption of remaining cost. Cities, towns and counties may in accordance with the provisions of this act accept federal aid in the doing of the acts provided in sections 1 and 3 [89-3301 and 89-3303] hereof, and may assume such portion of the cost thereof not discharged by such federal aid.

History: En. Sec. 4, Ch. 272, L. 1965.

89-3305. Right of way and construction costs. The cost of all right of way acquired by purchase or condemnation may be borne by the city, town or county together with any other property rights which may be required in furtherance of such projects, and the work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965.

89-3306. Federal direction of project. This act contemplates that the actual direction of the project and the doing of the work in connection

therewith is assumed by the federal government and the city, town or county provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal government may choose to make. Under such limitation all appropriate portions of this act shall apply.

History: En. Sec. 6, Ch. 272, L. 1965.

89-3307. Contributions to right of way costs—agreement to maintain works. Cities, towns and counties in furtherance of such flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Sec. 7, Ch. 272, L. 1965.

89-3308. Street or road fund used. The council, board of governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right of way or the maintenance of completed flood control projects.

History: En. Sec. 8, Ch. 272, L. 1965.

89-3309. Levy of special assessment—apportionment to property benefited. Any city, town or county that shall establish a flood control system pursuant to this act may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system. Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area in proportion to the benefit conferred. Such special assessments for the operation and maintenance of any flood control system authorized by this act shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965.

89-3310. Contracts for use of railroads and highways. Any city, town or county may contract with any railroad company or with the state highway commission for the use of railroad or highway rights of way and embankments, and other railroad or highway property which can be utilized by such city, town or county for the purpose of flood control or protection as part of its flood control system, for any period not exceeding ninety-nine (99) years.

History: En. Sec. 10, Ch. 272, L. 1965.

89-3311. Division of work into parts—separate proceedings for parts. Whenever any city, town or county has begun a flood control system under this act, the council, board or other governing body shall have the power to divide the work into parts, sections or districts; to omit parts of said work and to contract for any part or section separately and proceed

therewith the same as if the entire work or improvements were contracted for, done or made.

History: En. Sec. 11, Ch. 272, L. 1965.

89-3312. Indebtedness and bonds—bond election—tax levy to pay indebtedness. Cities, towns and counties are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds for the payment of the cost of improvements contemplated by this act by following the following procedures:

The governing body of the city, town or county may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal or general election. The notice of the election and the election itself shall be carried out in accordance with sections 11-2301 through 11-2330, Revised Codes of Montana, 1947, as amended, as to cities, and in accordance with sections 16-2002 through 16-2050, Revised Codes of Montana, 1947, as amended, as to the counties.

Taxes for the payment of said bonds shall be levied in accordance with sections 11-2301 through 11-2330 and sections 16-2002 through 16-2050, Revised Codes of Montana, 1947, as amended, as to cities and counties, respectively. The indebtedness incurred for the purposes herein provided shall not be considered an indebtedness for general or ordinary purposes and shall not be charged against or counted as part of the levies available for general or ordinary purposes.

History: En. Sec. 12, Ch. 272, L. 1965.

89-3313. Powers additional. This act, and each section thereof, shall be construed as granting additional power without limiting the power already existing in cities, towns and counties.

History: En. Sec. 13, Ch. 272, L. 1965.

Appropriation

Section 14 of Ch. 272, Laws 1965, appropriated $1.00 to the water conservation board from the general fund for the biennium commencing July 1, 1965.

Separability Clause

Section 15 of Ch. 272, Laws 1965 read "If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 272, Laws 1965 repealed all acts and parts of acts in conflict therewith.

TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME—MONEY

Chapter 1. Standard weights and measures—state sealer of weights and measures, 90-122.
6. Packaged commodities offered for sale, 90-601 to 90-621.

CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER OF WEIGHTS AND MEASURES

Section 90-122. Commissioner of agriculture ex officio sealer of weights and measures—deputies.

90-122. (4235) **Commissioner of agriculture ex officio sealer of weights and measures—deputies.** The commissioner of agriculture is hereby declared to be and is the ex officio state sealer of weights and measures. He shall appoint as many deputy sealers of weights and measures as he may deem necessary, subject to existing laws.

History: En. Sec. 1, Ch. 34, L. 1911; amd. Sec. 1, Ch. 83, L. 1913; re-en. Sec. 4235, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1939; amd. Sec. 44, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a final sentence reading, "Each such deputy shall give a bond to the state of Montana in the sum of one thousand dollars ($1,000.00) conditioned upon the faithful performance of his duties."

90-130. (4244) **Repealed.**

Repeal

This section (Sec. 10, Ch. 34, L. 1911; Sec. 10, Ch. 83, L. 1913; Sec. 11, Ch. 146, L. 1939), relating to inspection of commodities and packages thereof offered for sale, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see secs. 90-601 to 90-621.

90-132. (4246) **Repealed.**

Repeal

This section (Sec. 12, Ch. 83, L. 1913; Sec. 13, Ch. 146, L. 1939; Sec. 1, Ch. 130, L. 1951), relating to the sale of commodities by weight, count or measure, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see secs. 90-601 to 90-621.

90-144. (4258) **Repealed.**

Repeal

This section (Sec. 23, Ch. 34, L. 1911; Sec. 24, Ch. 83, L. 1913; Sec. 25, Ch. 146, L. 1939), relating to short or illegal sales, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-620.

CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

90-301. (4273) **Repealed.**

Repeal

This section (Sec. 1, Ch. 155, L. 1919; Sec. 2, Ch. 252, L. 1957), relating to standard weights for bread, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-614.

CHAPTER 6—PACKAGED COMMODITIES OFFERED FOR SALE

Section 90-601. Definition of terms.
90-602. Investigations.
90-603. Inspection of packages.
90-604. Stop-use, stop-removal, and removal orders.
90-605. Police powers—right of entry and stoppage.
90-606. Method of sale of commodities—general.
90-607. Declarations of quantity and origin—variations—exemptions.
90-608. Declarations of unit price on random packages.
90-609. Misleading packages.
90-610. Advertising packages for sale.
90-611. Sale by net weight.
90-612. Misrepresentation of price.
90-613. Meat, poultry, and seafood.
90-614. Bread.
90-615. Berries and small fruits.
90-616. Textile products.
90-617. Construction of contracts.
90-618. Hindering or obstructing officer—penalty.
90-619. Injunction.
90-620. Offenses and penalties.
90-621. Supplement clause.

90-601. Definition of terms. Meaning of terms when used in this act:

(1) The word "person" means both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies, and associations.

(2) The words "sell" and "sale" shall also mean barter and exchange.

(3) The terms "state sealer" and "deputy sealer" mean, respectively, the commissioner of agriculture of the state of Montana and his deputy sealers of weights and measures of the state of Montana.

(4) The word "container" means any receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put up for sale, or to be offered or exposed for sale.

(5) The term "intrastate commerce" means any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the state of Montana, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(6) The term "commodity in package form" means commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

History: En. Sec. 1, Ch. 160, L. 1965.

Title of Act

An act to provide for the regulation of commodities put up in packages in advance of being offered, or exposed for sale, sold, or in the process of delivery; to provide for the method of sale, advertisement, and enforcement; repealing sections 90-130, 90-132, 90-144, and 90-301, R. C. M. 1947.

90-602. Investigations. The state sealer or his deputy sealers shall investigate complaints made to him concerning violations of the provisions of this act, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions. If the state sealer or his deputy sealers have reason to believe that any person is violating any provision of this act, or any act relating to weights and measures, they shall submit the evidence to the properly constituted authority in the county in which such violation occurs, who shall thereupon prosecute the persons alleged to have violated any provision of this act, or any act relating to weights and measures, or such evidence may be submitted direct to the attorney general of the state, who shall have authority to prosecute such persons in the proper county.

History: En. Sec. 2, Ch. 160, L. 1965.

90-603. Inspection of packages. The state sealer or his deputy sealers shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain amounts represented and whether they be kept, offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of commodities are found not to contain the amount represented, or are found to be kept, offered, or exposed for sale in violation of law, the state sealer or his deputy sealers may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the state sealer or his deputy sealers may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall:

(1) sell, or keep, offer, or expose for sale, in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or

(2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner except with the specific approval of the state sealer.

History: En. Sec. 3, Ch. 160, L. 1965.

90-604. Stop-use, stop-removal, and removal orders. The state sealer or his deputy sealers shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this act he deems it necessary or expedient to issue such orders, and no

person shall use, remove from the premises specified, or fail to remove from the premises specified, any package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

History: En. Sec. 4, Ch. 160, L. 1965.

90-605. Police powers—right of entry and stoppage. With respect to the enforcement of this act the state sealer and his deputy sealers are hereby vested with special police powers, and are authorized to arrest, without formal warrant any violator of the said acts, and to seize for use as evidence amounts or packages of commodities found to be used, retained, offered, or exposed for sale, or sold in violation of law. In the performance of his official duties, the state sealer or his deputy sealers is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the sealer or his deputies may specify.

History: En. Sec. 5, Ch. 160, L. 1965.

90-606. Method of sale of commodities—general. Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure or length or area, or by count. Except that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold. And provided further, that the provisions of this section shall not apply:

(1) to commodities when sold for immediate consumption on the premises where sold,

(2) to commodities in containers standardized by a law of this state or by federal law,

(3) to vegetables when sold by the head or bunch, if the vegetables are customarily so sold,

(4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner,

(5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or

(6) to unprocessed vegetable and animal fertilizer when sold by cubic measure.

The state sealer may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 6, Ch. 160, L. 1965.

90-607. Declarations of quantity and origin—variations—exemptions. Except as otherwise provided in this act, any commodity in package form introduced or delivered for introduction into or received in intrastate

commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container,

(2) the net quantity of the contents in terms of weight, measure, or count, and

(3) in the case of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor: Provided, that in connection with the declaration required under subsection two (2), neither the qualifying terms "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package, shall be used: Provided further, that under subsection two (2) the state sealer shall, by regulation, establish:

(a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure,

(b) exemptions as to small packages, and

(c) exemptions as to commodities put up in variable weights or sizes intact and either customarily not sold as individual units or customarily weighed or measured at the time of sale to the consumer.

History: En. Sec. 7, Ch. 160, L. 1965.

90-608. Declarations of unit price on random packages. In addition to the declarations required by section seven (7) [90-607] of this act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 8, Ch. 160, L. 1965.

90-609. Misleading packages. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the state sealer. The state sealer or his deputy sealers, may seize any container, or its contents, or container and its contents, in violation of the provisions of this section and by order of a court having jurisdiction, the container or container and its contents or its contents, shall be condemned and destroyed or released upon such conditions as the court in its discretion may impose, to insure against their use in violation of this section.

History: En. Sec. 9, Ch. 160, L. 1965.

90-610. Advertising packages for sale. Whenever a commodity in a package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package. In connection with the declaration required under this section there shall be declared neither the qualifying term "when packed" nor any other words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 10, Ch. 160, L. 1965.

90-611. Sale by net weight. The word "weight" as used in this act in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

History: En. Sec. 11, Ch. 160, L. 1965.

90-612. Misrepresentation of price. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half (½) the height and width of the numerals representing the whole cents.

History: En. Sec. 12, Ch. 160, L. 1965.

90-613. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale, or sold, as food shall be offered or exposed for sale and sold by weight. When meat, poultry or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 13, Ch. 160, L. 1965.

90-614. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread, made or procured for sale, kept, offered, exposed for sale,

or sold, whether or not the bread is wrapped or sliced, shall weigh one-half (½) pound, one (1) pound, one and one-half (1½) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be promulgated by regulation by the state sealer. Except that the provisions of this section shall not apply to biscuits, buns, or rolls weighing less than eight (8) ounces, or to "stale bread" sold and expressly represented at the time of sale as such, and that the marking provisions of section seven (7) [90-607] shall not apply to unwrapped loaves of bread.

History: En. Sec. 14, Ch. 160, L. 1965.

90-615. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half (½) dry pint, one (1) dry pint, or one (1) dry quart. Provided, that the marking provisions of section seven (7) [90-607] of this act shall not apply to such containers.

History: En. Sec. 15, Ch. 160, L. 1965.

90-616. Textile products. It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any textile yard goods put up or packaged in advance of sale in a bolt or roll, or any other textile product put up or packaged in advance of sale in any other unit, for either wholesale or retail sale, unless such bolt or roll, or such other unit, be definitely, plainly, and conspicuously marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces, subject, however, to the following limitations and requirements:

(1) Any unit of twine or cordage may be marked to show its net measure in terms of feet. Ready-wound bobbins that are not sold separately shall not be required to be individually marked, but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the net weight or measure of the thread on each bobbin. Any unit of sewing, basting, mending, darning, crocheting, tatting, hand-knitting, or embroidery thread or yarn, except nylon hand-knitting yarn, that is not composed in whole or in part of wool, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the spool or other holder. Any retail unit of a textile product, sold only for household use, consisting of a package containing two or more similar individual units that are not sold separately, shall be marked to show the number of individual units in the package and the net weight or net measure of the product in each individual unit, but this proviso shall not apply where the individual units are separately marked. Any unit of yarn, composed in whole or in part of wool, sold to consumers for handiwork, shall be marked to show the net weight of such yarn, except that any unit of tapestry, mending, or embroidery yarn, the net measure of which does not exceed fifty yards, may be marked to show its linear measure only.

(2) The marking required by this section shall in all cases be in combination with the name and place of business of the manufacturer,

packer, or distributor of the product, or a trade-mark, symbol, brand, or other mark that positively identifies such manufacturer, packer, or distributor.

(3) Reasonable tolerances shall be permitted, and these shall be included in regulations for the enforcement of the provisions of this section that shall be issued by the state sealer.

(4) The provisions of this section shall not apply to the following textile products when sold at wholesale in bulk by net weight: Cordage, agricultural bag sewing threads, twines, yarns that are to be processed, and yarns that are to be industrially converted into end use products.

History: En. Sec. 16, Ch. 160, L. 1965.

90-617. Construction of contracts. Contracts for work done, or anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid.

History: En. Sec. 17, Ch. 160, L. 1965.

90-618. Hindering or obstructing officer—penalty. Any person who shall hinder or obstruct in any way the state sealer or his deputy sealers in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars ($20) or more than two hundred dollars ($200).

History: En. Sec. 18, Ch. 160, L. 1965.

90-619. Injunction. The state sealer is authorized to apply to any court of competent jurisdiction for, and such court for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this act.

History: En. Sec. 19, Ch. 160, L. 1965.

90-620. Offenses and penalties. Any person who by himself or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subsections one (1) through five (5) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars ($20) or more than two hundred dollars ($200); and upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500).

(1) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(2) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(3) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell, any commodity, thing, or service in a condition or manner contrary to law or regulation.

(4) Violate any provision of this act or of the regulations promulgated under the provisions of this act for which a specific penalty has not been prescribed.

(5) Refuse to exhibit any article, commodity or the container of any commodity, or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the state sealer or his deputy sealers, for the purpose of allowing the same to be tested and proved as to the quantity contained therein as in this act provided; or for the purpose of allowing the same to be inspected to ensure that all other requirements of this act have been complied with.

History: En. Sec. 20, Ch. 160, L. 1965.

Saving Clause

Section 21 of Ch. 160, Laws 1965 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 22 of Ch. 160, Laws 1965 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

90-621. Supplement clause. This act is intended to be supplementary, and is not intended to repeal sections 90-140 and 90-141, R. C. M. 1947, or any other law relating to weights and measures.

History: En. Sec. 23, Ch. 160, L. 1965.

Repealing Clause

Section 24 of Ch. 160, Laws 1965 read "Repealing section. Sections 90-130, 90-132, 90-144 and 90-301, R. C. M. 1947, are repealed."

REVISED CODES OF MONTANA

VOLUME 6

Part 2

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 2) THROUGH VOLUME 397, PACIFIC REPORTER (2ND SERIES)

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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—WILLS—EXECUTION AND REVOCATION

Section 91-105. State institutions which may take by gift, bequest or grant.
91-106. Persons who may make gifts to state institution.

91-105. (6978) **State institutions which may take by gift, bequest or grant.** The state of Montana, units of the university of Montana, the state school for the deaf and blind, all institutions in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose, are hereby empowered and given the right to accept, receive, take, hold, own, and possess gifts, donations, grants, devises, or bequests of real or personal property from any source whatsoever; and said gifts, donations, grants, bequests, or devises may be made direct to the state of Montana, or in the name of any of said institutions, or to any officer or board of said institutions, or to any person in trust for said institutions; but in the event the same shall be made direct to any such institution, or to any officer or board of any such institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used by the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance or improvement of such institution by the state of Montana.

History: En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R. C. M. 1921; amd. Sec. 96, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "units of" before "the university of Montana"; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "all institutions in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the Montana state tuberculosis sanitarium, the state asylum for the insane, the state penitentiary" after "school for the deaf and blind."

91-106. (6979) **Persons who may make gifts to state institution.** A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of eighteen

years, of sound mind, to the state of Montana, a unit of the university of Montana, the state school for deaf and blind, an institution in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established and supported, in whole or in part, by the state of Montana for any purpose. And any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state of Montana, or to any of the institutions above-named or referred to; but in the event any gift, donation, grant, devise, or bequest shall be made to any such institution, or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used for the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state of Montana.

History: En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R. C. M. 1921; amd. Sec. 97, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "a unit of" before the university of Montana; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "an institution in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the state asylum for the insane, the state penitentiary" after "school for deaf and blind."

CHAPTER 4—SUCCESSION

91-403. (7073) Succession to and distribution of estates.

Surviving Parent

Where decedent left no surviving wife nor children and his father was dead, his mother would be the sole beneficiary of his estate under this section. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

CHAPTER 43—PROBATE PROCEEDINGS, MISCELLANEOUS—CITATIONS—APPEALS, ETC.

Section 91-4324. Validation of fiduciary sales before 1965.

91-4324. Validation of fiduciary sales before 1965. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to the effective date of this act, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or

ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 60, L. 1965.

Title of Act

An act validating deeds and conveyances in sales of land and personal property heretofore made by trustees, executors, administrators and guardians, curing defects and irregularities in such sales, containing a repealing clause.

Repealing Clause

Section 2 of Ch. 60, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 44—INHERITANCE TAX

Section 91-4414. Exemptions from first $25,000.
91-4415. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.
91-4417. Powers of representative in collection and payment of tax—collection from legatees or distributees.

91-4407. (10400.1) Tax on clear market value—deductions.

References

Cited in Salvation Army v. State, — M —, 396 P 2d 463, 466.

91-4414. (10400.4) **Exemptions from first $25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1). * * * [Same as parent volume.]

(2) $20,000; $10,000; $2,000 exempt, when. Property of the clear value of twenty thousand dollars ($20,000), transferred to the wife, or ten thousand dollars ($10,000) transferred to the husband of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the widow shall include all her statutory dower and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which shall thereafter be transferred by or from such widow to any such child, provided the widow does not survive said decedent to exceed ten years.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 65, L. 1923; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965.

Amendment

The 1965 amendment increased exemptions specified in the first sentence of paragraph (2) from $17,500 to $20,000 for the wife of the decedent, and from $5,000 to $10,000 for the husband of the decedent.

91-4415. (10400.5) **When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final**

accounting allowed. All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten years from the time of the death of the decedent, whether said death occurred before or after the effective date of this act, unless sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall make triplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax, with the amount thereof, and the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts. One he shall keep on file in his office.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419.

History: En. Sec. 5, Ch. 65, L. 1923; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965.

Amendment

The 1965 amendment inserted "whether said death occurred before or after the effective date of this act" in the first paragraph.

91-4417. (10400.7) **Powers of representative in collection and payment of tax—collection from legatees or distributees.** Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee, having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property for the period provided in section 91-4415, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the attorney general under section 91-4440. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon

the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into the hands of such legatees, and for such further order relative thereto as the case may require.

History: En. Sec. 7, Ch. 65, L. 1923; amd. Sec. 2, Ch. 99, L. 1965.

Amendment

The 1965 amendment substituted "for the period provided in section 91-4415" for "until paid" following "charge on such real property" in the fifth sentence.

TITLE 92—WORKMEN'S COMPENSATION ACT

Chapter 4. Meaning of words employed in act, 92-410, 92-418, 92-438.
7. Compensation for various injuries—amount—payment, 92-701 to 92-704, 92-706, 92-709.
8. Miscellaneous regulations—powers of board—rehearings and appeals, 92-827, 92-834.
9. Compensation plan No. 1, 92-902.
13. Occupational Disease Act, 92-1304, 92-1311, 92-1313.

CHAPTER 1—INDUSTRIAL ACCIDENT BOARD—CREATION AND POWERS

92-101. (2816) **Name of act—what each part to contain.**

References

Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

92-106, 92-107. (2821, 2822) **Repealed.**

Repeal

These sections (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 81, L. 1941; Sec. 1, Ch. 235, L. 1947), relating to bonds of member and employees of the industrial accident commission, were repealed by Sec. 51, Ch. 177, Laws 1965.

CHAPTER 4—MEANING OF WORDS EMPLOYED IN ACT

Section 92-410. Employer defined.
92-418. Injury or injured defined.
92-438. Independent contractor defined.

92-410. (2862) **Employer defined.** "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor and every independent contractor, firm, voluntary associations and private corporation, including any public service corporation and including an independent contractor, who has any person in service, in hazardous employment, under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2862, R. C. M. 1921; amd. Sec. 2, Ch. 121, L. 1925; amd. Sec. 1, Ch. 50, L. 1965.

Amendment

The 1965 amendment inserted "every prime contractor and every independent contractor" after "every person."

92-418. (2870) **Injury or injured defined.** "Injury" or "injured" means a tangible happening of a traumatic nature from an unexpected cause, resulting in either external or internal physical harm, and such physical condition as a result therefrom and excluding disease not traceable to injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R. C. M. 1921; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965.

Amendment

The 1965 amendment made no apparent change. But see Lupien v. Montana Record Publishing Co., 143 M 415, 390 P 2d 455, 457.

Heart Attack

Where employee suffered fatal myocardial infarction at work but expert cardiologist testified that the attack was not a result of his employment, recovery was denied even though absolute proof was not possible. Ness v. Diamond Asphalt Co., 143 M 560, 393 P 2d 43.

92-438. (2890) **Independent contractor defined.** "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work, and not as to the means by which it is accomplished. But the legal defense of independent contractor shall not bar otherwise compensable industrial accident claims against employers except when such defense is interposed on behalf of a party who has previously required the claimant's immediate employer to come within the Workmen's Compensation Act.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2890, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1965.

Amendment

The 1965 amendment added the second sentence.

CHAPTER 6—CLAIMS—LIABILITY FOR INJURY UNDER DIFFERENT PLANS OF ACT

92-601. (2899) **Claims must be presented within what time.**

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

CHAPTER 7—COMPENSATION FOR VARIOUS INJURIES—AMOUNT—PAYMENT

Section 92-701. Compensation for injury producing temporary total disability.
92-702. Compensation for injury producing total disability permanent in character.
92-703. For partial disability.
92-704. Compensation for injury causing death.
92-706. Medical and hospital services and such other treatment as approved by the board to be furnished.
92-709. Compensation in case of specified injuries.

92-701. (2912) **Compensation for injury producing temporary total disability.** Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-five dollars ($35.00) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States, who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars ($38.00) per week; where the injured employee has a

wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60 %) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-two dollars ($42.00) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½ %) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-six dollars ($46.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65 %) of the weekly wages received at the time of his injury, subject to a maximum compensation of fifty-one dollars ($51.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing in the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3 %) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty-six dollars ($56.00) per week, and subject in all cases to a minimum compensation of thirty-one and 50/100 dollars ($31.50) per week, and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding three hundred (300) weeks from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 100, L. 1919; re-en. Sec. 2912, R. C. M. 1921; amd. Sec. 10, Ch. 121, L. 1925; amd. Sec. 12, Ch. 177, L. 1929; amd. Sec. 1, Ch. 230, L. 1947; amd. Sec. 1, Ch. 7, L. 1949; amd. Sec. 1, Ch. 48, L. 1951; amd. Sec. 1, Ch. 38, L. 1953; amd. Sec. 1, Ch. 253, L. 1955; amd. Sec. 1, Ch. 234, L. 1957; amd. Sec. 1, Ch. 162, L. 1961; amd. Sec. 1, Ch. 149, L. 1965.

Amendment

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation from $25.50 to $31.50.

92-702. (2913) **Compensation for injury producing total disability permanent in character.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-five dollars ($35.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55 %) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars ($38.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters, residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60 %) of the weekly wages received at

the time of the injury, subject to a maximum compensation of forty-two dollars ($42.00) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62 ½ %) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-six dollars ($46.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65 %) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty-one dollars ($51.00) per week; where the injured employee has a wife and four (4) children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3 %) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty-six dollars ($56.00) per week; and subject in all cases to a minimum compensation of thirty-one and 50/100 dollars ($31.50) per week; and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding five hundred (500) weeks from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 5, Ch. 100, L. 1919; re-en. Sec. 2913, R. C. M. 1921; amd. Sec. 11, Ch. 121, L. 1925; amd. Sec. 13, Ch. 177, L. 1929; amd. Sec. 2, Ch. 230, L. 1947; amd. Sec. 2, Ch. 7, L. 1949; amd. Sec. 2, Ch. 48, L. 1951; amd. Sec. 2, Ch. 38, L. 1953; amd. Sec. 2, Ch. 253, L. 1955; amd. Sec. 2, Ch. 234, L. 1957; amd. Sec. 2, Ch. 162, L. 1961; amd. Sec. 2, Ch. 149, L. 1965.

Amendment

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation from $25.50 to $31.50.

92-703. (2914) **For partial disability.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50 %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-five dollars ($35.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55 %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-eight dollars ($38.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60 %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty-two dollars ($42.00) per week; where

the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62 ½ %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty-six dollars ($46.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65 %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifty-one dollars ($51.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3 %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifty-six dollars ($56.00) per week; not exceeding however, the maximum compensation allowed in cases of total disability, and not exceeding in amount or duration the total compensation provided in the act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of permanent partial disability, and fifty (50) weeks in cases of temporary partial disability, subject to change when the number of dependents increases by birth, or decreases, provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of such member.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 6, Ch. 100, L. 1919; re-en. Sec. 2914, R. C. M. 1921; amd. Sec. 2, Ch. 177, L. 1929; amd. Sec. 3, Ch. 230, L. 1947; amd. Sec. 3, Ch. 7, L. 1949; amd. Sec. 3, Ch. 48, L. 1951; amd. Sec. 3, Ch. 38, L. 1953; amd. Sec. 3, Ch. 253, L. 1955; amd. Sec. 3, Ch. 234, L. 1957; amd. Sec. 3, Ch. 162, L. 1961; amd. Sec. 3, Ch. 149, L. 1965.

Amendment

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56.

92-704. (2915) **Compensation for injury causing death.** For beneficiaries residing within the United States: Where decedent leaves one (1) beneficiary, fifty per centum (50 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-five dollars ($35.00) per week; where decedent leaves two (2) beneficiaries, fifty-five per centum (55 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars ($38.00) per week; where decedent leaves three (3) beneficiaries, sixty per centum (60 %) of the wages received at the time of the injury subject to a maximum compensation of forty-two dollars ($42.00) per week; where decedent leaves four (4) beneficiaries, sixty-two and one-half [per centum] (62½ %) of the wages received at the time of the injury, subject to a maximum com-

pensation of forty-six dollars ($46.00) per week; where decedent leaves five (5) beneficiaries, sixty-five per centum (65 %) of the wages received at the time of the injury, subject to a maximum compensation of fifty-one dollars ($51.00) per week; where decedent leaves six (6) or more beneficiaries, sixty-six and two-thirds per centum (66 2/3 %) of the wages received at the time of the injury, subject to a maximum compensation of fifty-six dollars ($56.00) per week; and subject in all such cases to a minimum compensation of thirty-one and 50/100 dollars ($31.50) per week.

For beneficiaries residing outside of the United States: Where decedent leaves one (1) beneficiary, forty per centum (40 %) of the compensation which would be payable to such beneficiary, if residing within the United States; where decedent leaves two (2) beneficiaries, forty-five per centum (45 %) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves three (3) beneficiaries, forty-seven and one-half per centum (47½ %) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves four (4) or more beneficiaries, fifty per centum (50 %) of the compensation which would be payable to such beneficiaries, if residing within the United States.

If decedent leaves no beneficiaries, then compensation shall be payable as follows: To his major dependents, if any, residing in the United States at the date of the happening of the injury; where decedent leaves one (1) major dependent, fifty per centum (50 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-five dollars ($35.00) per week; where decedent leaves two (2) major dependents, fifty-five per centum (55 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars ($38.00) per week.

If the decedent leaves no major dependents, compensation shall be payable to his minor dependents, if any, if residing within the United States at the time of the happening of the injury, as follows: Where decedent leaves one (1) minor dependent, thirty per centum (30 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-five dollars ($35.00) per week; where decedent leaves two (2) minor dependents, thirty-five per centum (35 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars ($38.00) per week; where decedent leaves three (3) or more minor dependents, forty per centum (40 %) of the wages received at the time of the injury, subject to a maximum compensation of forty-six dollars ($46.00) per week.

If the decedent leaves no major or minor dependents a lump sum in the amount of three thousand and no/100 dollars ($3,000.00) shall be payable to his surviving parent or parents.

All such payments of compensation provided for in this section shall be subject to a maximum compensation of fifty-six dollars ($56.00) per week for a period not exceeding five hundred (500) weeks and subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and provided, further, that compensation payable to major or minor dependents shall not exceed the amount of the dependency.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 7, Ch. 100, L. 1919; re-en. Sec. 2915, R. C. M. 1921; amd. Sec. 12, Ch. 121, L. 1925; amd. Sec. 14, Ch. 177, L. 1929; amd. Sec. 4, Ch. 230, L. 1947; amd. Sec. 4, Ch. 7, L. 1949; amd. Sec. 4, Ch. 48, L. 1951; amd. Sec. 4, Ch. 38, L. 1953; amd. Sec. 4, Ch. 253, L. 1955; amd. Sec. 4, Ch. 234, L. 1957; amd. Sec. 4, Ch. 162, L. 1961; amd. Sec. 4, Ch. 149, L. 1965.

Compiler's Note

The compiler has inserted the bracketed words "per centum."

Amendment

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the first paragraph from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; increased the minimum weekly compensation at the end of the first paragraph from $25.50 to $31.50; increased the maximum weekly compensation set forth in clauses of the third paragraph from $29 to $35 and from $32 to $38; increased the maximum weekly compensation set forth in various clauses in the fourth paragraph from $29 to $35, from $32 to $38, and from $40 to $46; and increased the maximum weekly compensation set forth in the final paragraph from $50 to $56.

92-706. (2917) **Medical and hospital services and such other treatment as approved by the board to be furnished.** In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

During the first thirty-six (36) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board, not exceeding in amount the sum of twenty-five hundred dollars ($2500.00) provided however, that in cases of total disability where apportionment of such sum does not meet all hospitalization expenses, the board may allow an additional amount for additional hospital and medical expenses as in special cases it may deem proper. The employer or insurer or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under hospital contract as provided in section 92-610.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of an injured employee in a particular case such injured employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

And be it further provided, that where an injury arising out of and received in the course of employment necessarily results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the industrial accident board may, in its discretion, order that an artificial member be furnished to supply the loss of any such member or members so lost. The board may also order the replacement or repair of any prosthetic appliance damaged in an industrial accident. Such artificial member shall be furnished at the expense of the employer, operating under plan one, or the insurer, operating under plan two, or the industrial accident fund where the employer is operating under plan three. The replacement of an artificial member so furnished shall be required every five (5) years, if necessary, unless the board shall determine a replacement is needed within a shorter period.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 3, Ch. 196, L. 1921; re-en. Sec. 2917, R. C. M. 1921; amd. Sec. 14, Ch. 121, L. 1925; amd. Sec. 15, Ch. 177, L. 1929; amd. Sec. 2, Ch. 139, L. 1931; amd. Sec. 1, Ch. 229, L. 1943; amd. Sec. 2, Ch. 213, L. 1945; amd. Sec. 1, Ch. 41, L. 1949; amd. Sec. 7, Ch. 38, L. 1953; amd. Sec. 5, Ch. 253, L. 1955; amd. Sec. 6, Ch. 234, L. 1957; amd. Sec. 1, Ch. 81, L. 1965.

Amendment

The 1965 amendment inserted the second sentence in the final paragraph.

92-709. (2920) **Compensation in case of specified injuries.** In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, shall be as follows: Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-five dollars ($35.00) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars ($38.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60 %) of the wages received at the time of the injury, subject to a maximum compensation of forty-two dollars ($42.00) per week; where the injured employee has a wife and two (2) children or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½ %) of the wages received at the time of injury, subject to a maximum compensation of forty-six dollars ($46.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65 %) of the wages received at the time of the injury, subject to a maximum compensation of fifty-one dollars ($51.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66 2/3 %) of the wages received at the time of the injury, subject to a maximum compensation of fifty-six dollars ($56.00) per week, subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and subject in all cases to a minimum compensation of thirty-one and 50/100 dollars ($31.50) per week, and shall be paid for the following periods:

For loss of:

One arm at or near shoulder	280 weeks
One arm at the elbow	240 weeks
One arm between wrist and elbow	220 weeks
One hand	200 weeks
One thumb and the metacarpal bone thereof	75 weeks
One thumb at the proximal joint	37 weeks
One thumb at the second distal joint	25 weeks

One first finger and the metacarpal bone thereof	40 weeks
One first finger at the proximal joint	30 weeks
One first finger at the second joint	22 weeks
One first finger at the distal joint	15 weeks
One second finger and the metacarpal bone thereof	37 weeks
One second finger at the proximal joint	20 weeks
One second finger at the second joint	15 weeks
One second finger at the distal joint	8 weeks
One third finger and the metacarpal bone thereof	25 weeks
One third finger at the proximal joint	15 weeks
One third finger at the second joint	10 weeks
One third finger at the distal joint	5 weeks
One fourth finger and the metacarpal bone thereof	15 weeks
One fourth finger at the proximal joint	11 weeks
One fourth finger at the second joint	8 weeks
One fourth finger at the distal joint	6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
One leg between knee and ankle	190 weeks
One foot at the ankle	180 weeks
One great toe with the metatarsal bone thereof	37 weeks
One great toe at the proximal joint	18 weeks
One great toe at the second joint	12 weeks
One toe other than the great toe with the metatarsal bone thereof	16 weeks
One toe other than the great toe at the proximal joint	8 weeks
One toe other than the great toe at second or distal joint	5 weeks
One eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Partial loss or partial loss of use: Indemnity benefits for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

In any case in which there shall be a loss, or loss of use, of more than one member as set forth in this section, not amounting to permanent total disability, the award of indemnity benefits shall be for the loss, or loss of use thereof, which awards shall run consecutively, provided, however, that the total award or compensation in no case shall exceed five hundred (500) weeks.

Disfigurement: The board may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars ($2,500.00) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965.

Amendment

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from $25.50 to $31.50.

CHAPTER 8—MISCELLANEOUS REGULATIONS—POWERS OF BOARD—REHEARINGS AND APPEALS

Section 92-827. Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants.
92-834. How appeal taken—notice—record—trial.

92-821. (2947) Jurisdiction of board to hear disputes and controversies.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-825. (2951) When a nominal disability indemnity may be awarded.

Degree of Permanent Physical Impairment Unknown

Where the board found that a compensable impairment existed, but the degree of permanent physical impairment was unknown, it was proper to award nominal disability indemnity under this section. Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

92-827. (2953) Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants. A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney.

Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its

discretion or upon the application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by claimant or plaintiff.

In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board. Provided further, that the board must furnish a copy of such testimony, written exhibits, pleadings, records and proceedings to the claimant without cost.

After judgment on appeal to the district court, an indigent claimant, deeming himself aggrieved, may file in said court an affidavit that he does not have money, property or credit sufficient to pay for the cost of a transcript on appeal to the supreme court, and the clerk of court serve a copy by registered mail, return receipt requested, on the industrial accident board; the affidavit shall be prima facie evidence of the truth of the facts stated therein; in the event the board contest the allegations, the court shall fix a date for the hearing thereof, not less than five nor more than ten days from date of filing, and shall make its determination of the controversy, and if it be found and adjudged that the claimant does not have sufficient money, property or credit to pay for such transcript, the order shall direct the industrial accident board to furnish the same at its expense to be paid from the industrial accident administrative earmarked revenue account.

All proceedings on such appeal, including preparation, presentation and settlement of the bill of exceptions, shall be continued pending determination of the controversy.

If the board does not contest the allegations of the claimant's affidavit within ten days from receipt, it shall be deemed in default and the court shall make its order in favor of claimant on expiration of such period.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2953, R. C. M. 1921; amd. Sec. 4, Ch. 139, L. 1931; amd. Sec. 3, Ch. 162, L. 1937; amd. Sec. 1, Ch. 170, L. 1959; amd. Sec. 1, Ch. 111, L. 1965.

Amendment

The 1965 amendment added the fourth, fifth and sixth paragraphs.

Repealing Clause

Section 2 of Ch. 111, Laws 1965 repealed all acts and parts of acts in conflict therewith.

92-829. (2955) Application for rehearing.

Court Required to Make Findings of Fact and Conclusions of Law

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

92-830. (2956) Board may at any time diminish or increase an award.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-833. (2959) **Appeal to district court.**

Jurisdiction of District Court

District court had no jurisdiction to hear claimant's appeal from the decision of the industrial accident board when the court's seat was in neither the county of the employer's residence nor the county of the place of the accident. State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-834. (2960) **How appeal taken—notice—record—trial.** Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

History: En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2960, R. C. M. 1921; amd. Sec. 7, Ch. 149, L. 1965.

Amendment

The 1965 amendment made no apparent change.

Repealing Clause

Section 8 of Ch. 149, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 149, Laws 1965 read "This act shall be in full force and effect from and after the 1st day of July, 1965."

Court Required to Make Findings of Fact and Conclusions of Law

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

92-835. (2961) **Appearances—setting aside conclusions, orders, etc.**

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

92-838. (2964) **Court to give liberal construction to act.**

Failure to List Children in Claim

Where claimant failed to list all of his children in his claim for compensation it did not constitute a waiver of the claim. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

CHAPTER 9—COMPENSATION PLAN NO. 1

Section 92-902. Proof of solvency of employer electing plan No. 1 to be filed.

92-902. (2971) **Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

The board shall levy an assessment in the amount of not to exceed two hundredths of one per cent of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the board by said employer at the time of filing of proof of solvency.

No assessment shall be in an amount less than seventy-five dollars ($75.00).

If such employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

The treasurer of the board shall pay the amounts so collected into the state treasury.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965.

Amendment

The 1965 amendment increased the minimum assessment specified in the third paragraph from $10 to $75.

Repealing Clause

Section 2 of Ch. 183, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—OCCUPATIONAL DISEASE ACT

Section 92-1304. Occupational disease.
92-1311. Payment of compensation—exceptions and limitations.
92-1313. Notice of disability or death.

92-1304. Occupational disease. The following diseases only shall be termed occupational diseases.

1. Silicosis, asbestosis.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965.

Amendment

The 1965 amendment added "asbestosis" to item 1.

Repealing Clause

Section 2 of Ch. 95, Laws 1965 repealed all acts and parts of acts in conflict therewith.

92-1311. Payment of compensation—exceptions and limitations. A. Compensation shall be paid to every employee who becomes disabled by reason of occupational disease arising out of his employment, subject to the following conditions; and when claims are presented and notices given in accordance with the limitations of sections 92-1312 and 92-1313.

1. * * * [Same as parent volume.]

2. No compensation shall be paid for a disease other than silicosis or due to ionizing radiation unless total disability results within one hundred twenty (120) days from the last day upon which the employee actually worked for the employer against whom compensation is claimed; provided that the board upon good cause shown may waive this limitation in the interest of justice, but in any case said period may not be extended to more than one year from the date of last employment by the said employer.

3 to 5. * * * [Same as parent volume.]

B. The compensation shall be paid to the beneficiary and dependents of every employee covered by this act in cases where death results from an occupational disease arising out of his employment subject to the following conditions.

1 to 3. * * * [Same as parent volume.]

4. No compensation shall be paid for death from any occupational disease other than silicosis or due to ionizing radiation unless death results within one (1) year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease other than silicosis or ionizing radiation for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the board. In such cases compensation shall be paid if death results within three (3) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

5. * * * [Same as parent volume.]

C. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965.

Amendment

The 1965 amendment inserted "or due to ionizing radiation" following "silicosis" in paragraphs A 2 and B 4.

92-1313. Notice of disability or death. The provisions of section 92-807 shall not apply to cases of disability or death from occupational diseases as in this act defined.

Notice of disability or death in respect to which compensation is payable under this act, except disability or death resulting from silicosis, shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee, his beneficiaries, or his dependents knew or should have known the nature of the impairment or cause of death and its relationship to the employment, but in no event, except in the case of disability or death due to ionizing radiation, shall notice be filed more than one year after the last day upon which the

employee actually worked for the employer against whom compensation is claimed.

In cases of disability resulting from silicosis which are compensable under this act, notice of such disability shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee knew or should have known of the nature of the impairment and its relationship to employment, but in no event shall such notice be filed more than four (4) years after the last date upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of a death from silicosis which is compensable under this act, notice of such death shall be given to the employer, the insurer, or the board, within thirty (30) days after the employee's beneficiaries or his dependents knew or should have known of the cause of death and its relationship to the employment, but in no event shall such notice be filed more than one (1) year after such death.

Such notice shall be valid only if filed in writing on forms to be furnished by the board, and shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the disability or death, and shall be signed by the employee or by some other person on his behalf; or in case of death by any person claiming to be entitled to compensation for such death or by some person on his behalf.

Except if death occurs during the period of total disability described in section 92-1311, B.3., in which case the period of notice may be extended to the term of seven (7) years from the last day of said employment.

History: En. Sec. 13, Ch. 155, L. 1959; amd. Sec. 2, Ch. 92, L. 1965.

Amendment

The 1965 amendment inserted "except in the case of disability or death due to ionizing radiation" in the second paragraph.

REVISED CODES OF MONTANA

VOLUME 7

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 7 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 7 THROUGH VOLUME 397, PACIFIC REPORTER (2ND SERIES)

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For index see pocket supplement to Replacement Volume 9

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CHAPTER 2—SUPREME COURT

93-216. (8805) **Powers and duties of supreme court on appeals.**

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In an equity case it is proper for the appellate court to pry into the factual issues of the case and the decision must hinge on factual observations unless the case is returned to the lower court for further proceedings. Jenson v. Olson, — M —, 395 P 2d 465, 468.

The supreme court in reviewing an equity case will review the law therein and also will review the evidence to that extent necessary to ascertain whether the findings of fact by the trial court are substantially supported and sufficient to support the conclusions of law derived therefrom. Bender v. Bender, — M —, 397 P 2d 957.

References

Kyser v. Hiebert, 142 M 466, 385 P 2d 90.

CHAPTER 3—DISTRICT COURTS

93-320. (8831) **Process.**

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS

Section 93-901. Cases in which judge may be disqualified—calling in another judge.

93-901. (8868) **Cases in which judge may be disqualified—calling in another judge.** Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;

4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge. Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may be pending.

In any judicial district having only one judge the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the district court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least fifteen (15) days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of fifteen (15) days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court nor to the power of calling in another district judge to sit and act in such action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. No more than two judges can be disqualified in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion or proceeding; upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a district judge of another judicial district of the state; when another judge has assumed jurisdiction of an action, motion, or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the district court in which such action, motion or proceeding may be pending within three

days after the party or his attorney of record, filing such affidavit, has received notice as to the judge assuming jurisdiction of such action, motion, or proceeding.

History: Ap. p. Sec. 453, p. 134, Bannack Stat.; re-en. Sec. 610, p. 159, Cod. Stat. 1871; re-en. Sec. 530, p. 179, L. 1877; re-en. Sec. 530, 1st Div. Rev. Stat. 1879; re-en. Sec. 547, 1st Div. Comp. Stat. 1887; amd. Sec. 180, C. Civ. Proc. 1895; amd. Ch. 3, 2nd Ex. L. 1903; re-en. Sec. 6315, Rev. C. 1907; amd. Sec. 1, Ch. 114, L. 1909; re-en. Sec. 8868, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1927; amd. Sec. 1, Ch. 218, L. 1961; amd. Sec. 1, Ch. 82, L. 1963; amd. Sec. 1, Ch. 234, L. 1965. Cal. C. Civ. Proc. Sec. 170.

Amendment

The 1965 amendment deleted "by reason of the bias or prejudice of such judge" at the end of the first sentence of subdivision 4; divided subdivision 4 into two paragraphs; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 234, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3, of Ch. 234, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

CHAPTER 11—MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDCIAL OFFICERS

93-1101. (8877) Subsequent applications for orders refused, etc.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-1102. (8878) Violations of preceding section.

Frivolous Appeal

Where attorney specified as error in his appellate brief in a second action, the same point raised in his complaint in a previous action involving the same parties, the appeal was frivolous and damages were assessed in favor of the respondents. Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

CHAPTER 13—JURORS—QUALIFICATIONS AND EXEMPTIONS

Section 93-1301. Who competent to act as juror.

93-1301. (8890) Who competent to act as juror.

A person is competent to act as a juror if:

1. A citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year, and of the county ninety days before being selected and returned.

2 to 4. * * * [Same as parent volume.]

History: Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R. C. M. 1921; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965. Cal. C. Civ. Proc. Sec. 198.

Amendment

The 1965 amendment deleted "and not more than seventy" after "age of twenty-one" in paragraph 1.

Repealing Clause

Section 2 of Ch. 116, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 19—COURT REPORTERS

Section 93-1906. Salary and expenses of reporter—apportionment.

93-1906. (8933) **Salary and expenses of reporter—apportionment.** Every reporter appointed under the provisions of this chapter receives an annual salary of seven thousand eight hundred dollars ($7,800.00) and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The reporter is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1927; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965. Cal. C. Civ. Proc. Secs. 271 and 274.

Amendment

The 1965 amendment increased the salary set forth near the beginning of the section from $6,600 to $7,800.

CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION—LICENSE AND DISBARMENT

93-2026. (8961) **Disbarment of attorneys—causes—jurisdiction.**

Misappropriation

The conduct of an attorney in opening a checking account in the name of an estate of which he had been appointed executor and making withdrawals for his personal use constituted deceit and malpractice involving moral turpitude. In re O'Donnell, 143 M 51, 387 P 2d 303.

CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

93-2507. (9018) **Possession—when presumed, etc.**

Public Highway

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land even though the private owner was assessed for and paid taxes on the property during the running of the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

93-2513. (9024) **Occupancy and payment of taxes necessary, etc.**

Easement

Where the county maintained and paved a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land and it was not necessary that the county pay taxes on the property during the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

CHAPTER 26—LIMITATION OF OTHER ACTIONS

93-2603. (9029) **Within eight years.**

Nonparticipating Oil Royalty

Where wife agreed to property settlement granting her a percentage of royalties should oil ever be found on land, such right did not vest until oil production began and her action for royalties was not barred by the fact that it had been more than eight years since execution of the settlement. Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739.

93-2604. (9030) **Within five years.**

Damage to Building from Broken Water Pipes

This section did not apply to action by owners of apartment building against realtors for water damages to building from bursting of water pipes due to alleged negligence of realtors in caring for the building. The claim was barred by statute of limitations relating to injury to or waste or trespass on property, section 93-2607. Quitmeyer v. Theroux, — M —, 395 P 2d 965, 969, 970. (Dissenting opinion, — M —, 395 P 2d 965, 971.)

93-2607. (9033) **Two-year limitation.**

Damage to Building from Broken Water Pipes

Claim of owners of an apartment building against realtors for water damage to building from bursting of water pipes due to alleged negligence of realtors in caring for the building was barred by this section. Statute of limitations concerning implied contracts, section 93-2604, was inapplicable. Quitmeyer v. Theroux, — M —, 395 P 2d 965, 969, 970. (Dissenting opinion, — M —, 395 P 2d 965, 971.)

CHAPTER 28—PARTIES TO CIVIL ACTIONS

93-2809. (9075) **Parent or guardian may sue for injury, etc.**

Mother Bringing Action

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

93-2824. (9086) **Action—when not to abate by death, marriage, etc.**

Wrongful Death Action

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

93-2901. (9093) **Certain actions to be tried where the subject, etc.**

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640; Tassie v. Continental Oil Co., 228 F Supp 807, 808.

93-2903. (9595) Place of trial of actions against counties.

Action by County against Nonresident

This section does not require a change of venue where a county brings action against a nonresident in the district court of that county. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 808.

93-2904. (9096) Other actions, according to the residence, etc.

Change of Venue

Although express terms of construction loan agreement between borrowers residing in Lewis and Clark County and lender in Cascade County did not designate place of performance of the contract, district court of Lewis and Clark County properly denied motion of lender for change of venue of action for breach of the contract, where borrowers' affidavit in opposition to the motion showed that the contract was to be performed in Lewis and Clark County, the loan agreement, note and mortgage being executed in Lewis and Clark County for home to be built in that county and inspection, supervision and completion of the home were to take place in Lewis and Clark County where all bills were to be paid. Brown v. First Federal Savings & Loan Assn. of Great Falls, — M —, 394 P 2d 1017, 1019.

Performance of Contract

In an action for breach of an oral agreement to lease farm land, venue was in the county where the estate of one of the defendants was being probated, in which the other defendants resided, in which the land was located, and in which service was made and the creditor's claim filed. Erickson v. Toy, 142 M 121, 385 P 2d 268.

If contract is to be performed in a county other than the county of defendant's residence, then the plaintiff has his choice of the two counties in which to sue. He may sue in the county where defendant resides or in the county where the contract is to be performed. The provisions of this section are permissive. Brown v. First Federal Savings & Loan Assn. of Great Falls, — M —, 394 P 2d 1017, 1019.

In order for plaintiff to maintain action on contract in a county where defendant does not reside, the place of performance must be evident either by express terms of contract, or by necessary implication that a county other than that of defendant's residence is intended to be the county of performance. Brown v. First Federal Savings & Loan Assn. of Great Falls, — M —, 394 P 2d 1017, 1019.

Tort Actions

Attorney's advice to a client that a personal injury action had to be filed in the county where the cause arose was not improper or unethical. Petition of Wasson, 143 M 323, 389 P 2d 406.

Although either the county of residence of defendant or county where tort was committed was proper county in which to bring action for personal injury arising from accident, where none of the defendants were residents of Montana, the action was triable in any county designated by plaintiff in his complaint. Tassie v. Continental Oil Co., 228 F Supp 807, 809.

Defendant is not entitled to a change of venue in personal injury action where plaintiff filed the action in the proper county. Tassie v. Continental Oil Co., 228 F Supp 807, 809.

Where personal injury action arising from accident occurring in Fallon County, Montana, was commenced in Silver Bow County, Montana, by nonresident plaintiff, and nonresident defendants in removing action to federal district court designated Billings Division, but stated no statutory grounds for change of venue and did not show good cause for assignment to Billings Division, plaintiff was entitled to change of venue to Butte Division in which Silver Bow County was located. Tassie v. Continental Oil Co., 228 F Supp 807, 810.

93-2906. (9098) Place of trial may be changed in certain cases.

County Taxpayers as Jurors

Where county brought an action for damages done to bridge struck by defendant's truck, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was made up, necessarily, of taxpayers of that county, each of whom had a pecuniary interest of $31. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

Multiple Causes of Action

Where the defendant is entitled to a change of venue on one cause of action in a complaint containing more than one

cause of action, the motion for change must be granted even though the other cause or causes would be triable where the plaintiff commenced the action. Beavers v. Rankin, 142 M 570, 385 P 2d 640.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 810.

CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS—SERVICE OF SUMMONS

93-3002. (9106) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 23, p. 139, L. 1867), relating to endorsement of the complaint and issue of summons, is superseded by M. R. Civ. P., Rule 41(e) as amended by Sup. Ct. Ord. 10750.

93-3008. (9112) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 1, Ch. 37, L. 1917; Sec. 1, Ch. 135, L. 1949; Sec. 1, Ch. 122, L. 1951), relating to service of process on corporations through the secretary of state, is superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

93-3011, 93-3012. (9115, 9116) Superseded—Supreme Court Order 10750.

Supersession

These sections (Secs. 4, 5, Ch. 37, L. 1917), relating to service of process on corporations through the secretary of state, are superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

CHAPTER 37—VERIFICATION OF PLEADINGS

93-3702. (9163) Verification of pleadings.

References

Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 747.

CHAPTER 42—INJUNCTION

93-4203. (9242) Injuncton—when not allowed.

Discretionary Appointment

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in the proper exercise of their discretion. Steel v. Board of Railroad Commrs., — M —, 397 P 2d 101.

CHAPTER 43—ATTACHMENT

Section 93-4331.1. Release of attachment by clerk where no proceedings taken in main action.

93-4331.1. Release of attachment by clerk where no proceedings taken in main action. If a writ of attachment has been levied on real property as provided in section 93-4307, R. C. M. 1947, and no proceedings have been taken in the action in which the attachment was issued for a period of five years, the clerk of court shall upon application of the defendant or the record owner of such real property issue a release of the attach-

ment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

History: En. Sec. 1, Ch. 97, L. 1965.

Title of Act

An act providing that a lien of attachment on real property may be released by the clerk of court where no action has been taken to foreclose such lien for a period of five years.

CHAPTER 50—TRIAL BY JURY—FORMATION OF JURY—CHALLENGES

93-5011. (9344) Challenges for cause.

Taxpayers of Plaintiff County

Where county brought an action for damages to bridge, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was necessarily made up of taxpayers of that county each of whom had a pecuniary interest averaging $31. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—DIRECTED WHEN

93-5205. (9364) Directed verdict—when.

Review of Order Directing Verdict

In reviewing an order directing a verdict for the defendant, the supreme court would consider only the evidence of the plaintiff, excluding a bare scintilla but including every fair inference which might be drawn from the facts proved, as well as any evidence introduced by defendant which tended to support the plaintiff's case, and if the evidence viewed in the most favorable light tended to establish the case made by plaintiff's pleadings, the order would be reversed. McIntosh v. Lender-Kind Lumber Co., — M —, 393 P 2d 782.

References

Holland v. Konda, 142 M 536, 385 P 2d 272.

CHAPTER 53—TRIAL BY THE COURT

93-5305. (9369) Want of findings—judgment not reversed.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL

93-5505. (9390) Exceptions not presented at time of ruling, etc.

Late Presentment of Bill

A bill of exceptions presented after the time prescribed in this section is a nullity and cannot be considered on appeal. Anderson v. Mennie, — M —, 394 P 2d 853, 854.

References

State ex rel. Ridgway v. District Court, 143 M 313, 388 P 2d 269; Sullivan v. Silver Bow County, 143 M 567, 393 P 2d 354.

CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—RECORD ON APPEAL FROM FINAL JUDGMENT

93-5601. (9395) New trial defined.

Parties Restored to Original Position

The granting of a motion for a new trial restores the parties to the positions they occupied before the trial and the action is commenced anew with the parties limited to their original pleadings but unbound by previous evidence and testimony except as held by existing rules of evidence. Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5602. (9396) New trial in equity cases.

Irregularity in Proceedings

In an action for specific performance where plaintiff who had no knowledge of law or procedure acted as his own counsel and, though he received some assistance from the trial judge, many errors in the proceedings were shown in the record, it was within the discretion of the judge to grant defendant's motion for a new trial. Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5603. (9397) When a new trial may be granted.

Inadequate Damages

The trial court had no power in a condemnation case to condition its denial of a new trial on acceptance by the highway commission of a higher award. State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692.

Jury Misconduct

In a condemnation proceeding, affidavits from jurors showing that a newspaper cartoon having to do with condemnation cases in general had been viewed by some members of the jury during the trial could not be used to support the motion for a new trial in the absence of a showing that the verdict was reached in a manner other than by a fair expression of opinion by the jurors. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

References

Waite v. Waite, 143 M 248, 389 P 2d 181.

CHAPTER 57—JUDGMENT—MANNER OF GIVING AND ENTRY—JUDGMENT ROLL AND DOCKET—LIEN OF

Section 93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence.

93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified

copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 124, L. 1965.

Title of Act

An act to validate records of court proceedings containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered; and providing for a repealing clause.

Repealing Clause

Section 2 of Ch. 124, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 58—THE EXECUTION

Section 93-5813.1. Waiver of exemptions prohibited in unsecured note.
93-5846. Validation of judicial sales before 1965.

93-5813.1. Waiver of exemptions prohibited in unsecured note. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965.

Title of Act

An act to prohibit waiver of statutory exemptions.

93-5846. Validation of judicial sales before 1965. All judicial sales of real property which previous to the effective date of this act, provided no action is now pending to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale, and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed if now or when executed shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 57, L. 1965.

Title of Act

An act relating to validation of judicial sales of real property and curing defects or irregularities in the issuance of execution, manner of making or conducting the sale, or in the recitals or references in sheriffs' deeds, and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 57, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 64—QUO WARRANTO

93-6405. (9580) **When private person may commence action.**

Unqualified Appointee

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in proper exercise of their discretion. Steel v. Board of Railroad Commrs., — M —, 397 P 2d 101.

CHAPTER 80—SUPREME COURT—APPEALS TO

93-8003. (9731) From what judgment or order an appeal may be taken.

Dismissal of Action

An order granting a motion to dismiss is not appealable under this section. Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

93-8004. (9732) Time for taking appeal.

References

Seiffert v. Police Commission of Helena, — M —, 394 P 2d 172.

93-8005. (9733) Appeal—how taken.

Service on Respondent

Where notice of appeal is not served on the respondent party within six months of the date of judgment, the supreme court cannot acquire jurisdiction even though notice is filed with the district court within the statutory period. Seiffert v. Police Commission of Helena, — M —, 394 P 2d 172.

93-8017. (9745) Record on appeal from orders other than new trial.

Evidence Not in Record

Merits of appeal could not be determined where purported transcript on appeal did not contain certificate of judge that records included in the transcript had been used at the hearing. Anderson v. Mennie, — M —, 394 P 2d 853, 854.

93-8019. (9747) When an appeal may be dismissed.

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment when the statutory provisions for time and manner of appeal were not complied with. Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100.

93-8021. (9749) Supplementing defective record.

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment when the statutory provisions for time and manner of appeal were not complied with. Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100.

93-8023. (9751) Ruling against respondent may be reviewed.

References

Williams v. Wallace, 143 M 11, 386 P 2d 744.

CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT

93-8901. (9835.1) Scope.

Termination of Annexation Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. This chapter did not furnish the protestants a plain, speedy and adequate remedy. State ex rel. Konen v. City of Butte, — M —, 394 P 2d 753, 757.

CHAPTER 90—CERTIORARI (WRIT OF REVIEW)

93-9002. (9837) When and by what courts granted.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

93-9008. (9843) The review under the writ, extent of.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

93-9102. (9848) When and by what court issued.

Termination of Annexation Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings, took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgments Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy and adequate remedy. State ex rel. Konen v. City of Butte, — M —, 394 P 2d 753, 757.

CHAPTER 98—CONTEMPTS

93-9801. (9908) What acts or omissions are contempts.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

CHAPTER 99—EMINENT DOMAIN

Section 93-9913. The date with respect to which compensation shall be assessed.

93-9912. (9944) Appointment and meeting of commissioners.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence, and did not reflect an increased valuation due solely to a distribution of interest. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Measure of Damages—Leasehold Interests

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Severance Damages

While it is proper for the trial court to determine whether there has been an impairment of access, the question of the extent to which access has been impaired is for the jury, and it was not error for the court to refuse to give instructions to the effect that all means of access to the defendant's property had been destroyed. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

Verdict Form

It was not prejudicial error for the trial judge to give the jury a verdict form which was in accord with this section and which verdict was not out of proportion to the damage done the defendant. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

93-9913. (9945) **The date with respect to which compensation shall be assessed.** For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw lawful interest from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965. Cal. C. Civ. Proc. Sec. 1249.

Amendment

The 1965 amendment divided the section into paragraphs; substituted "full amount finally awarded" for "amount awarded" before "shall draw lawful interest" in the second sentence of the first paragraph; substituted "earlier of the following dates" and clauses (a) and (b) at the end of the first paragraph for "date of receipt of the award or any portion thereof"; and substituted the first two sentences of the final paragraph for "provided, however, that interest shall not be allowed or paid on so much thereof as shall have been paid to the landowner involved or withdrawn by such landowner from the court."

Separability Clause

Section 2 of Ch. 182, Laws 1965 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

Repealing Clause

Section 3 of Ch. 182, Laws 1965 read "All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act or part thereof, heretofore repealed."

Effective Date

Section 4 of Ch. 182, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Cost of Moving Personal Property

Where friends of condemnees gratuitously aided them in moving personal property from condemned realty, condemnees were not entitled to recover the costs of their friends' labor as an element of damages. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

Depreciation on Inventory

This section requires the state to pay for any damage to personal property re-

moved from condemned land including any depreciation in the inventory value of such property. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Market Value

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

93-9915. (9947) Appeal from assessment of commissioners.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence, and did not reflect an increased valuation due solely to a distribution of title. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

93-9920. (9952) Putting plaintiff in possession.

References

State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692 (concurring opinion).

CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF

93-401-4. (10508) Witness presumed to speak the truth.

Accomplice as Witness

In a first degree burglary case the credibility of the defendant's accomplice, a convicted felon, was for the jury. State v. Barick, 143 M 273, 389 P 2d 170.

93-401-9. (10513) Declaration of decedent evidence of pedigree.

References

Cited in Bender v. Bender, — M —, 397 P 2d 957.

93-401-12. (10516) Contents of writing—how proved.

Laboratory Test Results

In an action for damages for death of dairy cows and losses occasioned by poisoning, allowing cattle owner to testify concerning laboratory test results was not prejudicial where the testimony was brought out properly later without objection. Hopkins v. Ravalli County Electric Cooperative, Inc., — M —, 395 P 2d 106, 109.

93-401-17. (10521) The circumstances to be considered.

References

Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739.

93-401-26. (10530) Affirmative only can be proved.

References

Colarchik v. Watkins, — M —, 393 P 2d 786.

93-401-27. (10531) Facts which may be proved on trial.

References

Cited in Bender v. Bender, — M —, 397 P 2d 957.

CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

93-501-1. (10532) Certain facts of general notoriety assumed to be, etc.

Actual Knowledge

The burden of proof is on the individual litigant, and the courts are not required by the doctrine of judicial notice to inform themselves of facts not within the actual knowledge of the court, nor need the courts take judicial notice of a fact or facts when the party desiring such notice does not request it. Holtz v. Babcock, 143 M 341, 390 P 2d 801.

Succession to Office

The court took notice that upon his death the governor was succeeded as provided by law. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

References

Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 749.

CHAPTER 701—EVIDENCE—WITNESSES

93-701-1. (10533) Witness defined.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-2. (10534) All persons capable of perceptions, etc.

Felony Conviction

An accomplice may testify in a criminal case even though he is a convicted felon at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

93-701-3. (10535) Persons who cannot be witnesses.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-4. (10536) Persons in certain relations cannot be examined.

References

State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

93-1001-19. (10557) Copy of a foreign record—when evidence.

References

In re Hosova's Estate, 143 M 75, 387 P 2d 305.

93-1001-30. (10568) Manner of proving other official documents.

References

Holtz v. Babcock, 143 M 341, 390 P 2d 801.

CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS

93-1301-2. (10601) Inference defined.

Inference Distinguished from Suspicion

An inference is to be distinguished from mere suspicion which is "the act or an instance of suspecting: imagination or apprehension of something wrong or hurt-

ful without proof or on slight evidence" (quoting Webster's New International Dictionary, 3rd ed. 1961). State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-3. (10602) Presumption defined.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-4. (10603) When an inference arises.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-6. (10605) Specification of conclusive presumptions.

Estoppel by Own Acts

The doctrine of equitable estoppel set forth in subdivision 3 of this section is not available as a defense when the essential elements of estoppel are lacking. Belhumeur v. Dawson, 229 F Supp 78, 86.

CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN AGREEMENTS—CONCLUSIVE—UNANSWERABLE

93-1401-7. (10613) Agreement not in writing—when invalid.

Note or Memorandum

While the statute of frauds does not require that the memorandum be contained in a single document, where a memorandum did not name the parties to the alleged contract but referred to them as "we" and "our" and also tended to show that further negotiations were intended by the parties, it was not sufficient to satisfy the statute. Anderson v. KFBB Broadcasting Corp., 143 M 423, 391 P 2d 2.

CHAPTER 1501—EVIDENCE—PRODUCTION OF—SUBPOENAS

93-1501-1. (10616) Evidence to be produced, by whom.

Negligence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to come forth with sufficient evidence to show the lack of due care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

Res Ipsa Loquitur

Res ispa loquitur does not relieve the plaintiff of the burden of proving actionable negligence, nor is it sufficient that he show that he was injured and that the instrumentality which caused his injury was in the control of the defendant; he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

93-1901-6. (10664) When witness may refresh memory from notes.

References

State v. Jones, 143 M 155, 387 P 2d 913.

93-1901-11. (10668) How impeached.

References

State v. Lagge, 143 M 289, 388 P 2d 792.

93-1901-12. (10669) **Impeachment by evidence of declarations.**

References

State v. Lagge, 143 M 289, 388 P 2d 792.

CHAPTER 2001—EVIDENCE—EFFECT OF

93-2001-1. (10672) **Jury judges of effect of evidence, etc.**

Subdivision 4—Accomplice's Testimony

Where the court gave a defendant's instruction quoting this section verbatim in a criminal case, it may be assumed that the instruction was considered by the jury in weighing the evidence. State v. Barick, 143 M 273, 389 P 2d 170.

References

State v. Lagge, 143 M 289, 388 P 2d 792.

CHAPTER 2701

MONTANA RULES OF CIVIL PROCEDURE

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule

4. Persons subject to jurisdiction—Process—Service.

A. DEFINITION OF PERSON.

B. JURISDICTION OF PERSONS.

(1) Subject to Jurisdiction.

(2) Acquisition of Jurisdiction.

C. PROCESS.

(1) Summons—Issuance.

(2) Summons—Form.

D. SERVICE.

(1) By Whom Served.

(2) Personal Service Within the State.

(3) Personal Service Outside the State.

(4) Other Service.

(5) Service by Publication—When Permitted—Effect—Manner—Proof.

(a) When Permitted.

(b) Effect of Service by Publication.

(c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication.

(d) Number of Publications.

(e) Mailing Summons and Complaint.

(f) Time When First Publication or Service Outside State Must Be Made.

(g) When Service by Publication or Outside State Complete.

(h) Additional Information to Be Published.

(6) (a) Service on Secretary of State.

(b) [Continuance to Allow Defense.]

(7) Amendment.

(8) Proof of Service.

(9) Contents of Affidavit of Service.

(10) Procedure Where Only Part of Defendants Are Served.

III. PLEADINGS AND MOTIONS

8. General rules of pleading.

(b) DEFENSES—FORM OF DENIALS.

(c) AFFIRMATIVE DEFENSES.

12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.
(b) HOW PRESENTED.

V. DEPOSITIONS AND DISCOVERY

33. Interrogatories to parties.

VI. TRIALS

41. Dismissal of actions.
(e) FAILURE TO SERVE SUMMONS.

VII. JUDGMENT

55. Default.
(b) JUDGMENT.
(2) By the Court.
56. Summary judgment.
(c) MOTION AND PROCEEDINGS THEREON.

XI. GENERAL PROVISIONS

86. Effective date—Statutes superseded.
(a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
(b) STATUTES SUPERSEDED.

TABLE B. List of rules superseding statutes.
C. List of statutes superseded by rules.

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of rules.

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 4. Persons subject to jurisdiction—Process—Service.

Rule 4. Persons subject to jurisdiction—Process—Service.

A. DEFINITION OF PERSON. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without change.

B. JURISDICTION OF PERSONS.

(1) Subject to Jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In

addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

(a) the transaction of any business within this state;

(b) the commission of any act which results in accrual within this state of a tort action;

(c) the ownership, use or possession of any property, or of any interest therein, situated within this state;

(d) contracting to insure any person, property or risk located within this state at the time of contracting;

(e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or

(f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state.

(2) Acquisition of Jurisdiction. Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without apparent change.

Retroactive Application

The giving effect to the service of summons provisions of this rule, when the operative facts of the case to which the rule was applied had taken place prior to the effective date of the Montana Rules of Civil Procedure as set out in Rule 86 (a) was not a prohibited retroactive application of this rule within the meaning of section 12-201. Weber v. Hydroponics, Inc., 226 F Supp 117, 118.

Law Review

Ganz, "Doing Business" in Illinois as a Basis of Jurisdiction Over Nonresidents—Due Process and Contracts," Vol. 1, No. 4 Illinois Continuing Legal Education 75 (October 1963).

C. PROCESS.

(1) Summons—Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

(2) Summons—Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the

foregoing, the following: "This action is brought for the purpose of quieting title to the land situated in ———— County, Montana, and described as follows: (Here insert description of land.)." The provisions of sections 84-4165, R. C. M. 1947 and 93-6228, R. C. M. 1947, as well as the provisions hereinafter prescribed in D(5)(h), must be complied with.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment made minor changes in the caption to paragraph (2) and in references to R. C. M. 1947.

D. SERVICE.

(1) By Whom Served. Service of all process shall be made by a sheriff of the county where the party to be served is found, by his deputy, by a constable authorized by law, or by any other person over the age of 21 not a party to the action, except that a subpoena may be served as provided in Rule 45.

(2) Personal Service Within the State. The summons and complaint shall be served together, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the state, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of

this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate, or attorney for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii), if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv), if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court in this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is actually doing business within Montana or was actually doing business in Montana at the time the claim for relief arose, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no

such address for any such person could be found, and there has also been deposited with the said clerk the sum of $5.00 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana, or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other person as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make his return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within sixty days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

RULE 4D(2) is amended by adding a subdivision (i) to read:

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

Amended by Supreme Court Order November 28, 1966, effective January 1, 1967.

mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the governor, or to any member of such state board or state agency, and also by delivering an additional copy of the summons and complaint to the attorney general.

RULE 4D(3) is amended to read:

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(3) Personal Service Outside the State. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

Amended by Supreme Court Order November 28, 1966, effective January 1, 1967.

(4) Other Service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions of sections 40-2819, 40-3405, 40-3406, 40-3423, 40-3424, 93-6229, 93-6230, and 93-6232, R. C. M. 1947, when the action pertains to the provisions of such sections.

(5) Service by Publication — When Permitted — Effect — Manner — Proof.

(a) When Permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for divorce or for annulment of marriage of a resident of this state or for modification of a decree of divorce granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent

Advisory Committee Notes

Rule 4D(2):

The purpose of the proposed amendment is to remove doubts as to the manner of suing an estate and a trust, resultant from the inclusion of "an estate" and "a trust" in the definition of a person in Rule 4A.

Rule 4D(3):

To make it clear that personal service outside this state dispenses with the necessity for following the procedure for service by publication prescribed by 4D(5). The provision for service of "a summons and complaint" permits personal service of either the original summons or the summons for publication, together with the complaint. As provided in 4D(5)(g), in case of personal service outside of this state service is complete on the date of such service.

Rule 4D(8)(d):

To make it clear that it is the date and not the hour of day which should be shown in the admission of service. The time requirement in certificates or affidavits of personal service is considered desirable and no change in the last paragraph of 4D(8) is recommended.

Rule 33:

To put the interrogatories and answers into one document for convenience of use, and to remove any obstacle to the service of interrogatories which may result from the present requirement of service upon "every other party."

of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of Service by Publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of court.

(d) Number of Publications. Service of the summons by publication may be made by publishing the same three times, once each week for three successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing Summons and Complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at his place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time When First Publication or Service Outside State Must Be Made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When Service by Publication or Outside State Complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional Information to Be Published. In addition to the form of summons prescribed above in "C. Process, (2) Summons —Form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on Secretary of State. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of the court in which such claim for relief is pending the sum of five dollars to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of

state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or his deputy to the party to be served at his last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or his deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or his deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon him by the clerk of court, including the day, and hour of such service; (2) the fact of his mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where he is relieved from doing so under the provisions of D(2)(f) in which cases his affidavit shall so recite; and (3) the fact of his receipt of a return from the postal department including the date, and hour thereof, and attaching to his affidavit a copy of such return. The secretary of state, or his deputy, shall then transmit the original summons, and his original affidavit along with copy of his notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in his office a copy of the summons, a copy of the affidavit served on him by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) [Continuance to Allow Defense.] In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such

continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of Service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, his certificate thereof;

(b) If by any other person, his affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint the post office as required by law, if the same shall have been dep... or

(d) The written admission of the defendant showing the ti... place of service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of Affidavit of Service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure Where Only Part of Defendants Are Served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment rewrote paragraphs (e) and (f) of subdivision (2), for previous text of which see parent volume; substituted "if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can" for "that the defendant, if a domestic or foreign corporation, has no agent for the service of process, nor managing nor business agent, cashier, secretary, or other officer who can" in clause (ii) of paragraph (5)(c); inserted "and if desired, it may be combined in one instrument with the affidavit required under 4 D(2)(f), or 4 D(6)" at the end of clause (ii) of paragraph (5)(c); substituted the second sentence of paragraph (5)(e) for two sentences applying only to foreign corporations, for text of which see parent volume; substituted "any party intended to be served by such publication" for "any person not served within said 60-day period" at the end of paragraph (5)(f); completely rewrote subdivision (6), for

RULE 4D(8)(d) is amended to read as follows:

(d) The written admission of the defendant showing the date and place of service.

Amended by Supreme Court Order November 28, 1966, effective January 1, 1967.

previous text of which see parent volume; inserted "by" in clause (8)(b); and made minor style changes in paragraphs (3), (4), and (5)(a)(iv).

Commission Note to 1965 Amendment

Because of criticism from several members of the Bar, as well as the office of the Secretary of State, changes have been made in the provisions of Rule 4. In addition, some housekeeping changes have also been made.

We have inserted at the points where changes or additions have been made the new language italicized [not italicized herein; see Amendment note above].

Several members of the Bar have called the attention of the Rules Committee to the fact that particularly in quiet title actions, where defunct corporations were involved, and where none of the persons could be found with due diligence upon whom service could be completed that would be binding on the defunct corporation, that effective service could not be obtained by reason of the requirement of a return of a registered receipt showing delivery of the summons and complaint to the defunct corporation. We have now corrected that defect. In doing so, we have also brought within the framework of Rule 4 the provisions of R. C. M. 1947, Sections 93-3008, 93-3011, and 93-3012, which will be superseded. In addition, as long as we are changing Rule 4, we have now specified and delineated the same persons to be served whether or not the defendants are domestic or foreign corporations, or domestic or foreign partnerships or other unincorporated associations. It will be recalled that when Rule 4 was first promulgated, and in an effort not to bring about any changes in our prior practice, the old, separate, segregated statutes pertaining to domestic and foreign corporations were segregated in Rule 4. There is no reason, however, why the same persons should not be delineated for both domestic and foreign corporations, and we have now done so in this new writing of Rule 4.

In lieu of the requirement of a return receipt signed on behalf of the corporations, which in many instances cannot be accomplished, as pointed out in the criticism from the Bar, we have now added a requirement for publication of summons against such corporation where none of the persons can be found with due diligence upon whom personal service can be completed. (See the new D(2)(f). In so providing, however, we have now spelled out that the same procedure for publications shall be followed for serving corporations personally in in personam actions, as we have provided for serving such corporations by publication in in rem actions (see D(5)(e)).

Accordingly, we have made an effort to combine and streamline service on corporations by designating the same individual persons who can be served, whether the corporations are domestic or foreign, and providing the same procedure of publication where such persons cannot be found with due diligence, whether or not the defendants are domestic and foreign, and we have eliminated the necessity of the return of a signed registry receipt objected to so heavily by the Bar.

A second important change in the rule is specific authorization for an attorney for the plaintiff to incorporate within the framework of one single affidavit all the material necessary for serving defunct corporations personally, for serving by way of publication, and for serving the secretary of state.

Changes have also been made in those portions of the rule providing for service on the secretary of state. We have eliminated the necessity of the intermediate step of having summons and complaint go through the hands of the sheriff in Lewis and Clark County; we have cut down on the papers that must be kept on file by the secretary of state, particularly eliminating the necessity of his keeping a copy of the complaint; and we have provided a requirement that the secretary of state shall now serve upon the attorney for the plaintiff the factual information showing what was done by the secretary of state in effecting service, and the date when it was accomplished.

There are other minor housekeeping changes in the rule, and wherever there is any change, omission, alteration, or new language, reference to it is contained at the points where such is accomplished.

DECISIONS UNDER FORMER LAW

Paragraph (8)

Appearance and waiver executed by a foreign corporation, not qualified to do business in Montana, acknowledging receipt of amended complaint filed by plaintiff sufficiently complied with former section 93-3018. Greene Plumbing & Heating Co. v. Morris, — M —, 395 P 2d 252, 255.

III. PLEADINGS AND MOTIONS

Rule 8. General rules of pleading.
12. Defenses and objections—When and how presented—By pleading or motion —Motion for judgment on pleadings.

Rule 7. Pleadings allowed—Form of motions.

(a) PLEADINGS.

References

Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

(c) DEMURRERS, PLEAS, ETC., ABOLISHED.

References

Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 8. General rules of pleading.

(a) CLAIMS FOR RELIEF.

Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note may properly proceed at its option against either security in the same action. Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

(b) DEFENSES—FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment substituted "or" for "of" after "only a part" in the fourth sentence.

(c) AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment substituted "af-

firmatively" for "affirmative" after "shall set forth" in the first sentence.

Res Judicata

Where supreme court affirmed dismissal of complaint by trial court on ground that complaint was unverified as required by section 93-3702 and on additional ground that complaint failed to state a claim upon which relief could be granted and a week later plaintiff filed a second verified amended complaint which eliminated confusion, the issue of res judicata was not so clear that the supreme court on the second appeal could say that the trial court could have found the defense of res judicata available without an answer under Rule 8(c) or responsive pleading to present the record of the former judgment plus a statement to show why it should be treated as res judicata. Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 748.

Rule 9. Pleading special matters.

(b) FRAUD, MISTAKE, CONDITION OF THE MIND.

References

Brooks v. Brooks Pontiac, Inc., 143 M 256, 389 P 2d 185.

Rule 11. Signing of pleadings.

Lack of Verification

Where a complaint was prepared to conform to this rule but lacked verification, and defendant waited until after he received an adverse judgment to raise the issue in a motion to dismiss on appeal, such motion failed as his proper remedy would have been a motion to strike under Rule 12. Adams v. Davis, 142 M 587, 386 P 2d 574.

Rule 12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.

(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(i) The cases in which place of trial may be changed are specified in section 93-2906, R. C. M. 1947.

(ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of his first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which

defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact.

(iii) Any request for change in place of trial for grounds 2 and 3 of section 93-2906, R. C. M. 1947, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than twenty days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 93-2906, and competent proof is submitted to the court that such cause of impartiality did not exist within the twenty-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 93-2906 within twenty days after that later event occurs.

(iv) With respect to ground 4 of section 93-2906, R. C. M. 1947, the party who disqualifies a district judge, and who desires a change of venue, must include such request in a motion filed along with the affidavit of disqualification. If the party who does not disqualify the district judge desires a change of venue, he shall make such request by motion within 5 days after being served with a copy of the affidavit of disqualification. Unless the parties have agreed in writing upon another district judge, or upon a member of the bar as judge pro tempore, the disqualified district judge must either call in another district judge within fifteen days after filing of the affidavit of disqualification, or ten days after filing of the motion for change of venue, or, if no other judge is called in, grant the motion for change of venue. If any other qualified district judge shall be called in, as herein provided, and shall, within thirty days after the motion for change of venue has been filed, appear and assume jurisdiction of the cause and of all matters and proceedings therein, no change of the place of trial shall be made. If the other qualified district judge called in, as herein provided, fails to appear and assume jurisdiction within thirty days after the motion for change of venue has been filed, then the disqualified judge must immediately grant the motion and order a change in the place of trial to some other county.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment renumbered some of the numbered clauses in the first sentence and added subdivisions (i) to (iv). See Commission Note below.

Commission Note to 1965 Amendment

The numbering of the defenses which may be made by motion is changed to conform to that of the Federal Rule, which results in there being no "(3)" because "improper venue" as a ground for motion to dismiss was deleted in 1963. Subdivisions (i), (ii), (iii), and (iv) are added to clarify and detail the time and manner for motions for change of place of trial in the cases specified in Section 93-2906, R. C. M. 1947.

Involuntary Dismissal

Rule 41(b), providing for involuntary dismissal which operates as an adjudication upon the merits, has no application to a motion to dismiss for failure to state a claim under this rule. Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 750.

Motion to Dismiss

A motion to dismiss under this rule is equivalent to a demurrer under former procedure. Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100; Holtz v. Babcock, 143 M 341, 389 P 2d 869; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

While a motion to dismiss for failure to state a claim on which relief can be granted is the same as a demurrer under former Montana procedure and therefore admits to all facts well pleaded, it does not admit to controversial conclusions of law or to the accuracy of alleged construction of written instruments set forth in the pleading. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

An order sustaining a motion to dismiss is not appealable. Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under this rule, the judgment was not res judicata as to a second amended complaint under the provisions of Rule 56(c) treating motion as a summary judgment where matters outside the pleadings were presented to and not excluded by the court. Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 749.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 13. Counterclaim and cross-claim.

(g) CROSS-CLAIM AGAINST COPARTY.

DECISIONS UNDER FORMER LAW

Parties to Cross-claim

District court did not have jurisdiction and power to adjudicate mechanics' liens of cross-complainants, materialmen, where they failed to serve the principal contractor with process. Greene Plumbing & Heating Co. v. Morris, — M —, 395 P 2d 252, 256.

Rule 15. Amended and supplemental pleadings.

(a) AMENDMENTS.

Right to Amendment of Course

The motion to dismiss for failure to state a claim is not a responsive pleading within the provisions of this rule that complaint may be amended once as a matter of course before a responsive pleading is served. Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 748.

V. DEPOSITIONS AND DISCOVERY

Rule 33. Interrogatories to parties.

Rule 30. Depositions upon oral examination.

(b) ORDERS FOR THE PROTECTION OF PARTIES AND DEPONENTS.

Limitation of Examination

In a libel action it was not error for the trial judge to issue a minute entry order refusing to require the defendant to answer questions submitted by the plaintiff as the court has the power to limit the examination and protect him from annoyance, embarrassment or oppression. Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 33. Interrogatories to parties.

Any party may serve upon any adverse party, who has been served with process or who has appeared, written interrogatories to be an-

swered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 20 days after the service of interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 20 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

A party desiring to serve interrogatories upon an adverse party shall file and serve a copy thereof upon every other party. The party answering the interrogatories shall file the answers in the court in which the action is pending and serve a copy thereof upon every other party.

History: En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment added the third paragraph.

Commission Note to 1965 Amendment

This amendment is consistent with Rule 5. The requirement of service of interrogatories and answers upon all other parties to the litigation may save other parties additional time and effort in duplication of interrogatories resultant from lack of knowledge of what other parties have done. The requirement of filing of answers makes them available to judges who may want to see them.

VI. TRIALS

Rule 41. Dismissal of actions.

Rule 39. Trial by jury or by the court.

(c) ADVISORY JURY AND TRIAL BY CONSENT.

New Trial

In an equity action for specific performance tried before an advisory jury, where the court granted defendant's motion for a new trial, the court was not required to order that the new trial be by jury as had the original proceedings. Waite v. Waite, 143 M 248, 389 P 2d 181.

RULE 33 is amended to read:

Any party may serve upon any adverse party, who has been served with process or who has appeared, written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A party serving interrogatories upon an adverse party shall file the same in the court in which the action is pending. The interrogatories shall be answered separately and fully in writing under oath. The party answering the interrogatories shall set forth a verbatim re-copy of each of the interrogatories, followed by the answer thereto, and shall file the answers in the court in which the action is pending. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served for answer shall serve a copy of the answers upon every party who has made written appearance within 20 days after the service of interrogatories upon him, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 20 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

Amended by Supreme Court Order November 28, 1966, effective January 1, 1967.

Rule 41. Dismissal of actions.

(a) VOLUNTARY DISMISSAL—EFFECT THEREOF.

References

Vennes v. Nollmeyer, — M —, 394 P 2d 178.

(b) INVOLUNTARY DISMISSAL—EFFECT THEREOF.

Failure to State a Claim

This rule has no application to a motion to dismiss for failure to state a claim under Rule 12(b). Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 750.

DECISIONS UNDER FORMER LAW

Insufficient Evidence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to show the lack of proper care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

(e) FAILURE TO SERVE SUMMONS. No action heretofore or hereafter commenced shall be further prosecuted as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court within three years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said three years. When more than one defendant has been named in an action, the action may within the discretion of the trial court be further prosecuted against any defendant who has appeared within three years, or upon whom summons which has been issued within one year has been served and return made and filed with the clerk within three years as herein required.

History: En. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced" in the first part of the first sentence; substituted "unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court" for "summons shall have been served and return made" in the latter part of the first sentence; and added the second sentence.

Commission Note to 1965 Amendment

This clarifies and brings together the laches provisions with respect to issuance and service of summons. At present Rules 4 C(1), 41(e), Section 93-3002, R. C. M. 1947, and Rule 12(b) all need to be referred to. This amendment incorporates the laches provision of Section 93-4705 (7), R. C. M. 1947, which was repealed by Chapter 13 of the 1961 Session Laws.

This amendment renders Section 93-3002, R. C. M. 1947, unnecessary, and that section superseded and added to Tables B and C.

Rule 42. Consolidation—Separate trials.

(b) SEPARATE TRIALS.

References

Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

Rule 43. Evidence.

(b) SCOPE OF EXAMINATION AND CROSS-EXAMINATION.

Plaintiff Called as Defense Witness

Where plaintiff appeared as her own only witness and was not cross-examined by the defendant who then called her as a defense witness, the defense was bound by her testimony even though it came after the plaintiff herself had rested her case. Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739.

Rule 51. Instructions to jury—Objection.

Refusal to Give Instructions

Denial of offered instructions which were adaptable to defendant's theory of the case was prejudicial error where such denial deprived him of a possible defense of assumption of risk. Wollan v. Lord, 142 M 498, 385 P 2d 102.

It is not error for the trial judge to refuse to give specific instruction where the subject in question has been adequately covered by other instructions. Holland v. Konda, 142 M 536, 385 P 2d 272.

Rule 52. Findings by the court.

(a) EFFECT.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

VII. JUDGMENT

Rule 55. Default.
56. Summary judgment.

Rule 54. Judgments—Costs.

(b) JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.

Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note could properly proceed at its option against either security in the same action. Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

Rule 55. Default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1). * * * [Same as parent volume.]

(2) By the Court. In all other cases the party entitled to a judgment be default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least

three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment inserted "an" before "account" in the final sentence of paragraph (2).

Clerk's Error

Entry of default judgment by clerk of court without requiring affidavit from plaintiff of amount due and owing rendered the judgment voidable but not void. Interstate Counseling Service v. Emeline, — M —, 396 P 2d 727, 728. (Dissenting opinion, — M —, 396 P 2d 727, 729.)

Motion to set aside default judgment because of plaintiff's failure to file affidavit of amount due and owing when it requested entry of default judgment was properly denied where defendant permitted judgment to be satisfied from her property, and no reason to avoid the voidable judgment had been presented. Interstate Counseling Service v. Emeline, — M —, 396 P 2d 727, 728. (Dissenting opinion, — M —, 396 P 2d 727, 729.)

Under Rule 61 omission of clerk of court to require affidavit of amount due under this rule before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. Interstate Counseling Service v. Emeline, — M —, 396 P 2d 727, 728. (Dissenting opinion, — M —, 396 P 2d 727, 729.)

Ministerial Function

Clerk of court in entering a default judgment is performing a ministerial function and must follow procedures in detail and absolutely. Interstate Counseling Service v. Emeline, — M —, 396 P 2d 727, 728. (Dissenting opinion, — M —, 396 P 2d 727, 729.)

Rule 56. Summary judgment.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Affidavits shall not be considered for any purpose on motion for summary judgment. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

History: En. Sec. 56, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "answers to interrogatories" in the first sentence.

Commission Note to 1965 Amendment

The amendment expressly includes "answers to interrogatories" among material which may be considered on motion for summary judgment. This conforms to an amendment to the Federal Rule adopted January 21, 1963, the Federal Rule having inadvertently omitted the phrase. The courts have generally reached by interpretation the result required by the amendment.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under Rule 12(b), the judgment was not res judicata as to a second amended complaint under this section where matters outside the pleadings were presented to and not excluded by court. Rambur v. Diehl Lumber Co., — M —, 394 P 2d 745, 749.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

Rule 59. New trials—Amendment of judgments.

(d) ON INITIATIVE OF COURT.

References

Waite v. Waite, 143 M 248, 389 P 2d 181; State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

(e) MOTION TO ALTER OR AMEND A JUDGMENT.

Additur

This rule did not give the district court power to order an additur to a condemnation award as a condition of denying motion for new trial. State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692.

Rule 60. Relief from judgment or order.

(b) MISTAKES—INADVERTENCE—EXCUSABLE NEGLECT —NEWLY DISCOVERED EVIDENCE—FRAUD, ETC.

Excusable Neglect

Defendant's contention that "personal problems drove all thought of lesser problems from his mind" was not sufficient to set aside a default judgment under subsection 1 of this section. Dudley v. Stiles, 142 M 566, 386 P 2d 342.

Voidable Judgment

This rule does not apply to voidable judgments. Interstate Counseling Service v. Emeline, — M —, 396 P 2d 727, 728. (Dissenting opinion, — M —, 396 P 2d 727, 729.)

Rule 61. Harmless error.

Clerk's Error

Omission of clerk of court to require affidavit of amount due under Rule 55(b) (1) before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. Interstate Counseling Service v. Emeline, — M —, 396 P 2d 727, 728. (Dissenting opinion, — M —, 396 P 2d 727, 729.)

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 65. Injunctions.

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

XI. GENERAL PROVISIONS

Rule 86. Effective date—Statutes superseded.

Rule 81. Applicability in general.

(a) SPECIAL STATUTORY PROCEEDINGS.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

(b) APPEALS TO DISTRICT COURTS.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

(c) RULES INCORPORATED INTO STATUTES.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 86. Effective date—Statutes superseded.

(a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS. These Rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these rules shall be first prepared by the advisory committee, which shall distribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than ninety (90) days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least thirty (30) days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to become effective at times other than January 1 will be published and transmitted at least thirty (30) days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment divided subdivision (a) into two paragraphs; inserted the second, third, fourth, fifth, and sixth sentences of the first paragraph and the first and second sentences of the second paragraph; substituted "These rules and amendments" for "They" at the beginning of the third sentence of the second paragraph; inserted "or amendments" after "particular action pending when the rules" in the latter part of the third sentence of the second paragraph; and substituted "became effective" for "will take effect" in the first sentence of the first paragraph.

Retroactive Application

The giving effect to the service of summons provisions of Montana Rules of Civil Procedure, Rule 4, subd. B, when the operative facts of the case to which the rule applied had taken place prior to

the effective date provided in this section, was not a prohibited retroactive application of Rule 4, subd. B, within the meaning of section 12-201. Weber v. Hydroponics, Inc., 226 F Supp 117, 118.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

(b) STATUTES SUPERSEDED. Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment inserted "or amendments thereto" after "these rules"; and made another minor change in phraseology.

Table B. List of Rules Superseding Statutes.

Rule	Statutes Superseded (R. C. M. 1947, sections)
4D	16-809, 93-3008, 93-3011, 93-3012
41(e)	93-3002

History: En. Sec. 82, Ch. 13, L. 1961; amd. Sec. 3, Ch. 14, L. 1963; amd. Sec. 2, Ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment added sections 16-809, 93-3008, 93-3011, and 93-3012 to the list of sections superseded by Rule 4 D; and added section 93-3002 to the list of sections superseded by Rule 41(e).

Table C. List of Statutes Superseded by Rules.

Statutes Superseded (R. C. M. 1947, sections)	Rules
93-3002	41(e)
93-3008	4D
93-3011	4D
93-3012	4D
16-809	4D

History: En. Sec. 83, Ch. 13, L. 1961; amd. Sec. 4, Ch. 14, L. 1963; amd. Sec. 3, ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment added sections 16-809, 93-3002, 93-3008, 93-3011, and 93-3012 to the table.

REVISED CODES OF MONTANA

VOLUME 8

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME THROUGH VOLUME 397, PACIFIC REPORTER (2ND SERIES)

Edited by

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and

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Editorial Supervisor

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NEW LAWS IN VOLUME 8

For index see pocket supplement to Replacement Volume 9

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MONTANA REVISED CODES

TITLE 94—CRIMES AND CRIMINAL PROCEDURE

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CHAPTER 1—DEFINITIONS AND PRELIMINARY PROVISIONS

94-101. (10710) **Construction of penal statutes.**

References

Petition of Cheadle, 143 M 327, 389 P 2d 579.

94-102. (10711) Provisions similar to existing laws, how construed.

Amendment Increasing Punishment

Where the effect of the amendment of a statute is only to increase the prescribed punishment, the unchanged portion of the statute remains in effect. State v. Cline, 135 M 372, 339 P 2d 657.

94-105. (10714) What intent to defraud is sufficient.

References

Cited in State v. Harmon, 135 M 227, 340 P 2d 128.

94-107. (10716) Proceedings to impeach or remove officers, etc.

References

Cited in State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-114. (10723) Felony and misdemeanor defined.

Concurrent Sentences

Where defendant was convicted of a felony under the first portion of a consolidated information and of a misdemeanor under the second portion and the trial court adjudged that the sentences be served concurrently, the sentence for the felony should be served in the state prison and credit for the misdemeanor fine should be given at the same time, and any remaining time under the misdemeanor at the end of the state prison term should be served in the county jail. State v. Bogue, 142 M 459, 384 P 2d 749.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-116. (10725) Punishment of misdemeanor, etc.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-117. (10726) To constitute crime there must be unity of act, etc.

Criminal Negligence

Insofar as the offense of involuntary manslaughter is concerned under section 94-2507, the proof of culpability is supplied by evidence of criminal negligence. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

It is wholly unnecessary in involuntary manslaughter cases to superimpose upon the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if that act is done in a manner which is criminally negligent, it thereby becomes malum in se and thereby includes the element of mens rea. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

Under a prosecution for involuntary manslaughter, irrespective of the character of the unlawful act, whether malum in se or merely malum prohibitum, the criminality of the act resulting in death is established if that act was done negligently in such a manner as to evince a disregard for human life or an indifference to consequences. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

Involuntary Manslaughter

Wilful or evil intent is not an element of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1021.

References

State v. Holdren, 143 M 103, 387 P 2d 446.

94-118. (10727) Intent, how manifested, and who considered, etc.

References

State v. Holdren, 143 M 103, 387 P 2d 446.

94-119. (10728) Drunkenness no excuse for crime, etc.

Intoxication

While voluntary intoxication is generally no defense to a criminal charge, it may be a defense where a specific intent is an essential element of the crime charged. Alden v. State, 234 F Supp 661, 672.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); State v. Zumwalt, 129 M 529, 291 P 2d 257, 261.

CHAPTER 2—PERSONS LIABLE TO PUNISHMENT—PARTIES TO CRIME

94-201. (10729) Who are capable of committing crimes.

Instructions

Refusal to give instruction under subd. 6 of this section was not reversible error in view of other instructions given. State v. Allison, 122 M 120, 199 P 2d 279, 289.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); State v. Smith, 126 M 124, 246 P 2d 227, 228.

94-204. (10732) Who are principals.

"Accomplice" Defined

An accomplice is one who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. State v. Harmon, 135 M 227, 340 P 2d 128.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show the defendant's guilt that he aided or abetted in the commission of the crime. State v. Maciel, 130 M 569, 305 P 2d 335, 336.

Conspiracy

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

All participants in a conspiracy may be found guilty of any of the degrees of murder or one or more may be found guilty of each degree. State v. Alton, 139 M 479, 365 P 2d 527, 538.

All parties to a conspiracy are guilty whether their part in the conspiracy is large or small, and whether or not that part is to be carried out at a distance from the other conspirators. State v. Alton, 139 M 479, 365 P 2d 527, 538.

Felony Murder Rule

Where defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. State v. Morran, 131 M 17, 306 P 2d 679.

Injury to Perpetrator of Crime

A bartender who worked after hours for the sole purpose of making illegal sales of liquor and signaling prostitutes as to the arrival of prospective customers was in pari delicto and could not recover from his employer for an injury received during such employment. Lencioni v. Long, 139 M 135, 361 P 2d 455.

Instructions

Where a verbal declaration of one codefendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-6423, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. State v. Keller, 126 M 142, 246 P 2d 817, 821.

Kidnaping

Defendant was guilty of confining prison guard secretly against his will in violation of section 94-2602 where the evidence showed that defendant, an inmate of the state prison, walked behind prison guard with a knife, after another inmate had disarmed the guard, until the inmates had placed the guard in isolation. State v. Frodsham, 139 M 222, 362 P 2d 413, 419.

Operation and Effect

Under this section and section 94-6423, evidence was sufficient to sustain a con-

viction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. State v. Simon, 126 M 218, 247 P 2d 481, 484.

References

Cited or applied in State v. Phillips, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 3—ABANDONMENT AND NEGLECT OF WIFE AND CHILDREN

Section 94-301. Abandonment or failure to support wife—penalty for.
94-304. Desertion or abandonment of child or ward a felony—suspension of sentence, when.

94-301. (11017) **Abandonment or failure to support wife—penalty for.** Every person, having sufficient ability to provide for his wife's support, or who is able to earn the means for such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless in the judgment of the court or jury he is justified in abandoning her by her misconduct, shall be guilty of a misdemeanor.

History: En. Sec. 470, Pen. C. 1895; re-en. Sec. 8345, Rev. C. 1907; amd. Sec. 1, Ch. 77, L. 1917; re-en. Sec. 11017, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1963. Cal. Pen. C. Sec. 270.

Amendment

The 1963 amendment deleted language which appeared near the beginning of the section and read, "who: 1. Having any child under the age of sixteen years, dependent upon him or her for care, education or support, wilfully omits, without lawful excuse, to furnish necessary food, clothing, shelter or medical attention for his or her child or children, or ward or wards; or"; and made minor changes in style and arrangement.

References

Cited or applied in State v. McBane, 128 M 369, 275 P 2d 218, 221.

94-302. (11018) **Orders which may be entered by the court.**

Cross-Reference

Enforcement of support orders of other states, secs. 93-2601-1 to 93-2601-40.

References

Cited or applied in State v. McBane, 128 M 369, 275 P 2d 218, 219, 221.

94-304. (11020) **Desertion or abandonment of child or ward a felony—suspension of sentence, when.** Any person who has a child or ward under the age of sixteen (16) years who is dependent upon him or her for care or support shall not:

(1) Desert or abandon such child or ward without providing necessary and proper shelter, food, clothing and medical care for such child or ward; or

(2) Wilfully omit, without lawful excuse, to provide necessary and proper shelter, food, clothing and medical care for such child or ward.

A person who violates this section is guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than one (1) year nor more than five (5) years in the state prison. The court may suspend such sentence if the defendant shall furnish a bond in such penal sum, and with such surety or sureties as the court may fix, conditioned that he will furnish his child or ward with necessary and proper shelter, food, care, and clothing. In case of failure to comply with the conditions of such bond, the court may order such person to appear before the court and show

cause why sentence should not be imposed, whereupon the court may pass sentence or may modify the order and take a new bond and further suspend sentence as may be just and proper. The judge may declare a bond forfeited and may, in his discretion, order the face amount of such bond used to support the persons deserted, abandoned or neglected.

History: En. Sec. 471, Pen. C. 1895; amd. Sec. 1, Ch. 6, L. 1905; re-en. Sec. 8346, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 11020, R. C. M. 1921; amd. Sec. 2, Ch. 179, L. 1963. Cal. Pen. C. Sec. 270b.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

Change of Plea of Guilty

Where defendant was charged with desertion of minor children and upon arraignment the defendant indicated that he wanted to plead guilty and court read him this section making it a felony to desert and abandon children under 15 years of age, and also sections 94-301 and 94-302 which make it a misdemeanor to omit without lawful excuse to furnish necessary board, clothing, shelter or medical attention to children under the age of 16 years, the court abused its discretion in refusing to grant the defendant's motion to change his plea of guilty since there was a misunderstanding as to what the defendant pleaded guilty. State v. McBane, 128 M 369, 275 P 2d 218. (Dissenting opinion, 128 M 369, 275 P 2d 218, 222.)

94-306. (11022) Cruelty to children.

Failure to provide medical attention for child as criminal negligence. 12 ALR 2d 1047.

CHAPTER 4—ABORTION

94-401. (11023) Administering drugs, etc., with intent to, etc.

Admissibility of evidence of commission of similar crimes in prosecution based on abortion. 15 ALR 2d 1080.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts. 16 ALR 2d 949.

CHAPTER 6—ASSAULTS

Section 94-602. Assault in second degree.

94-601. (10976) Assault in the first degree defined—penalty.

Criminal Intent

The element of felonious intent in every contested criminal case must necessarily be determined from the facts and circumstances of the particular case, this for the reason that criminal intent, being a state of mind, is rarely susceptible of direct or positive proof and therefore must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence. State v. Madden, 128 M 408, 276 P 2d 974, 978.

Operation and Effect

In a prosecution for assault in the first or second degree the prosecution had to prove by satisfactory evidence, that when the defendant pointed a gun at a person he intended to commit a felony upon that person; instructions defining the felony must be given to the jury so that the jury can determine if the evidence showed such intended felony. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059 (the court was not in agreement on this however, see the dissenting opinions of two judges on pages 1060, 1063).

Penalty

Defendant charged with assault in first degree was properly sentenced to state prison for 18 years which was within the statutory term for the offense of which the jury found him guilty and during trial on first day of assault charge he pleaded guilty to three prior felony convictions charged in same information charging assault in first degree. State v. McLeod, 131 M 478, 311 P 2d 400, 408.

Sufficiency of Information

Trial court did not err in overruling defendant's demurrer to amended information and in overruling his objection to the in-

troduction of evidence and his motion to dismiss the information, where the amended information complied with the requirements of sections 94-6401, 94-6403 to 94-6405 and 94-6412. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

References

Cited or applied in State v. Smith, 126 M 124, 246 P 2d 227, 228.

Indecent proposal to woman as criminal assault. 12 ALR 2d 971.

94-602. (10977) **Assault in second degree.** Every person who, under circumstances not amounting to the offense specified in the last section:

(1) With intent to injure unlawfully, administers to, or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, or any drug or medicine, the use of which is dangerous to life or health; or,

(2) With intent thereby to enable or assist himself, or any other person, to commit any crime, administers to, or causes to be administered to, or taken, by another, chloroform, ether, laudanum, or any other intoxicating narcotic, or anesthetic agent; or,

(3) Wilfully or wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

(4) Wilfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or,

(5) Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person,

is guilty of an assault in the second degree, and is punishable by imprisonment in the state prison for not less than one nor more than six years, or by a fine not exceeding two thousand dollars, or both.

History: En. Sec. 401, Pen. C. 1895; re-en. Sec. 8313, Rev. C. 1907; re-en. Sec. 10977, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1961. Cal. Pen. C. Secs. 216, 222, and 245.

Amendment

The 1961 amendment increased the maximum term of imprisonment from five to six years.

Instructions on This Section

Instructions defining the felony intended to be committed must be given to the jury in a prosecution of assault in the first or second degree so that the jury may determine if the evidence showed an intended felony. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059.

Subd. 4

Operation and Effect

Evidence was insufficient to justify a conviction of second degree assault with a deadly weapon where it was disclosed that the defendant was hunting jack rabbits at the time; that he never knew the prosecuting witness prior to the day of the alleged assault; that the rifle was extremely sensitive and would fire upon being brushed against an object such as clothing or even a change in temperature might fire the gun; and that the defendant was an instructor in firearms in the army during the war and would not have missed from the distance of eight feet had he been aiming at the prosecuting witness. State v. Smith, 126 M 124, 246 P 2d 227, 228.

Evidence was sufficient to justify a conviction under this section when it was shown that defendant was with a group of boys who fired a barrage of shots at a house and some of the pellets hit the house; the fact that the prosecuting witness had moved to a position away from the line of fire did not prevent the attack from being an assault upon him and sustained the charge that the guns were fired toward him and in his direction. State v. Simon, 126 M 218, 247 P 2d 481, 482, 483, 484.

Proof of Offense Different Than That Charged

Where defendant was charged with assault in the second degree as defined in subd. 4, it was error to introduce evidence

that the defendant in pointing the firearm was resisting a lawful arrest by the sheriff in violation of subd. 5. State v. Storm, 124 M 102, 220 P 2d 674, 675.

Specific Intent

Specific intent needs to be proved in second degree assault charges only under subdivisions 1, 2 and 5 of this section. State v. Straight, 136 M 255, 347 P 2d 482, 487.

Sufficiency of Evidence

Where evidence did not show that defendant pointed gun at sheriff after he was handed paper by deputy which purported to be a warrant, evidence was insufficient to support a conviction under either subd. 4 or 5 of this section. State v. Storm, 124 M 102, 220 P 2d 674, 678.

Sufficiency of Information

Information charging defendant with unlawfully threatening another by pointing a loaded revolver at him charged a criminal offense. State v. Storm, 124 M 102, 220 P 2d 674, 675.

An information charging that the defendant committed the crime of assault in the second degree by wilfully, wrongfully, unlawfully, and feloniously assaulting a human being by wounding and inflicting grievous bodily harm contrary to the form, force and effect of the statute, was sufficient to let the defendant know specifically the crime with which he was charged. State v. Straight, 136 M 255, 347 P 2d 482, 486.

Even though, in an information charging second degree assault, it was not charged specifically that a belt was used in the assault, admission of evidence that a belt was used was not error. State v. Straight, 136 M 255, 347 P 2d 482, 487.

Denial of state's second application for leave to file information charging assault on ground that probable cause was not shown was an abuse of discretion where supplementary proof as to probable cause in the form of affidavits of deputy county attorney and six witnesses and copy of police report were filed, the district court, in denying first application for failure to have witnesses endorsed thereon having commented that probable cause existed. State ex rel. McLatchy v. District Court, — M —, 395 P 2d 245, 248.

References

Cited or applied in State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539.

94-603. (10978) Assault in third degree.

Instructions

It was error to refuse defendant's instructions defining assault in the third degree, and instead instructing the jury as to assault in the first and second degree but omitting any instructions defining what felony was intended to be committed by assaulting a person with a gun. Since the jury had no way of knowing what felony, if any, the defendant intended to commit upon a person by pointing a gun at him, the jury should have been allowed to consider whether or not defendant was guilty of third degree assault. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059.

94-605. (10980) Use of force not unlawful.

Subd. 3

Operation and Effect

Evidence failed to justify a conviction of assault with a deadly weapon when it was shown that the defendant was merely exercising force in defense of his home, inasmuch as the prosecuting witness came to defendant's cabin in the company of another fellow who had intruded in defendant's home and lived there without defendant's permission and who the defendant had to forcibly evict, and also someone had been stealing log poles from the defendant. State v. Nickerson, 126 M 157, 247 P 2d 188, 192, 193.

Subd. 4

Intent

Under this section, in order to convict one standing in loco parentis of assault upon a child, it is not necessary to prove either express or implied malice or permanent injury. It is up to the jury to determine from the facts and circumstances of each individual case whether the manner of punishment is reasonable and the degree moderate. State v. Straight, 136 M 255, 347 P 2d 482, 490.

CHAPTER 7—BIGAMY AND INCEST

94-705. (11029) Incest.

Amendment of Information

There was no substantial change in the charge where the court allowed the state to amend an information charging defendant with incest by changing "fornication" to "adultery." Whether the defendant was married and unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. State v. Kuntz, 130 M 126, 295 P 2d 707, 710.

CHAPTER 8—BRIBERY AND CORRUPTION

94-804. (10856) Improper attempts to influence jurors, referees, etc.

Operation and Effect

Where the evidence discloses that the defendant conversed with a grand juror privately at the latter's home it cannot be construed to be in the regular course of proceedings and thus within the exception to this section. State v. Porter, 125 M 503, 242 P 2d 984, 990.

94-806. (10858) Embracery.

Operation and Effect

After a person has been discharged as a grand juror, the crime of embracery could not be committed even though the defendant thought he was influencing a grand juror. State v. Porter, 125 M 503, 242 P 2d 984, 987.

CHAPTER 9—BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS

Section 94-901. Burglary defined.
94-904. Word "enter" defined.

94-901. (11346) Burglary defined. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, motor vehicle and aircraft, vessel, or railroad car, with intent to commit grand or petit larceny or any felony, is guilty of burglary.

History: Ap. p. Sec. 58, p. 188, Bannack Stat.; re-en. Sec. 69, p. 281, Cod. Stat. 1871; re-en. Sec. 69, 4th Div. Rev. Stat. 1879; amd. Sec. 1, p. 50, L. 1885; re-en. Sec. 73, 4th Div. Comp. Stat. 1887; amd. Sec. 820, Pen. C. 1895; re-en. Sec. 8620, Rev. C. 1907; re-en. Sec. 11346, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1949; amd. Sec. 1, Ch. 17, L. 1957. Cal. Pen. C. Sec. 459.

Amendments

The 1949 amendment inserted the word "automobile" and the word "or" before "railroad car."

The 1957 amendment substituted the words "motor vehicle and aircraft" for the word "automobile."

Effective Date

Section 2 of Ch. 17, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 18, 1957.

Aiding Another in Entry

To support a conviction of two persons for burglary, it is not essential that the entry shall be by both, but if one of them entered and was aided by the other in so doing both are guilty, since burglary may be committed by being present and aiding another in entering. State v. Harmon, 135 M 227, 340 P 2d 128.

Burglary Tools as Evidence

Burglary tools may be introduced and received into evidence only after proof is made connecting the tools with the accused or the crime and, where it does not appear from the evidence that the tools were ever in the possession or under the control of the defendant or that they were in any way connected with the alleged crime, their admission as evidence is error. State v. Filacchione, 136 M 238, 347 P 2d 1000.

Proof of Intent—Circumstantial Evidence

An express intention to commit a felony or larceny does not have to be proved, but it may be manifested by circumstances connected with perpetration of the offense without any positive testimony as to express intent. State v. Board, 135 M 139, 337 P 2d 924.

Truck

The legislature has made it clear that an automobile and truck are to be considered two distinct and separate vehicles for registration and tax purposes. It does not make sense to hold that the legislature intended, in making entry into an automobile burglary, to have intended the word "automobile" as a general term, and to include automobiles, trucks, busses and the like. Had the legislature intended to use a general term, it would have used the term "motor vehicle." Certainly no interpretation should be given any word which would make an act a crime unless it is clear that the legislature intended that interpretation should be given such word. State v. Duran, 127 M 233, 259 P 2d 1051, 1052. (See, however, the dissenting opinion, 127 M 233, 259 P 2d 1051, 1054.)

References

Cited in State v. Allison, 122 M 120, 199 P 2d 279, 299; State v. Fitzpatrick, 125 M 448, 239 P 2d 529.

94-902. (11347) Degrees of burglary.

Failure to Prove Time Crime Was Committed

Where the information alleges nighttime or first degree burglary it is essential that the state prove the crime occurred during the nighttime as provided in section 94-905. When the evidence is that the crime took place sometime between 3:15 a.m. and 8:00 a.m. and that on the particular day the sun rose at 5:56 a.m. a conviction of nighttime burglary cannot stand. State v. Fitzpatrick, 125 M 448, 239 P 2d 529, distinguished in 135 M 139, 144, 337 P 2d 924, 927.

94-903. (11348) Penalty.

References

Cited in State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318; Petition of McGrath, 143 M 397, 390 P 2d 452.

94-904. (11349) Word "enter" defined. The word "enter," as used in this chapter, includes the entrance of the offender into such house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, automobile, vessel, or railroad car, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, or used or intended to be used, to threaten or intimidate the inmates, or to detach or remove the property.

History: En. Sec. 823, Pen. C. 1895; re-en. Sec. 8623, Rev. C. 1907; re-en. Sec. 11349, R. C. M. 1921; amd. Sec. 2, Ch. 126, L. 1949.

Amendment

The 1949 amendment inserted the words "store, mill, barn" and the word "automobile."

Repealing Clause

Section 3 of Ch. 126, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 126, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

94-905. (11350) Nighttime defined.

Operation and Effect

When an information charges nighttime or first degree burglary, proof that the crime occurred in the period between sunset and sunrise is essential in order to convict the defendant. State v. Fitzpatrick, 125 M 448, 239 P 2d 529, distinguished in 135 M 139, 144, 337 P 2d 924, 927.

References

Cited in State v. Board, 135 M 139, 337 P 2d 924, 927; State v. Moran, 142 M 423, 384 P 2d 777.

94-909. (11354) **Carrying deadly weapon with intent to assault, etc.**

References

Cited or applied in State ex rel. Keast v. District Court, 136 M 367, 348 P 2d 135, 138.

CHAPTER 10—COMMON NUISANCES—MAINTENANCE IN CONNECTION WITH SELLING INTOXICATING LIQUORS—OPIUM—PROSTITUTION AND GAMBLING

Section 94-1002. Certain buildings declared nuisances.

94-1001. (11123) **Definition of "person" and "building."**

Operation and Effect

Actions for the prosecution of gambling laws may be prosecuted under either of these sections or under sections 94-2401 and 94-2404, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Fact that county attorney proceeded under this law for abatement of gambling nuisance, rather than under sections 94-2401 and 94-2404 for criminal punishment, is not a matter of which the defendant can complain on appeal. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

94-1002. (11124) **Certain buildings declared nuisances.** Every building or place or tract of land under one ownership used for the purpose of lewdness, assignation, or prostitution, and every building or place or tract of land under one ownership wherein or upon which acts of lewdness, assignation, or prostitution are held or occur, and any building, place or tract of land under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are carried on or occurs, contrary to any of the laws of the state of Montana, or wherein any wine rooms are conducted or maintained, contrary to the laws of the state of Montana, or wherein any opium or coca leaves, their salts, derivatives, and preparations thereof are sold or given away or used contrary to the laws of the state of Montana, is a nuisance which shall be enjoined, abated, and prevented as hereinafter provided, whether the same be a public or private nuisance.

History: En. Sec. 2, Ch. 95, L. 1917; amd. Sec. 1, Ch. 76, L. 1921; re-en. Sec. 11124, R. C. M. 1921; amd. Sec. 1, Ch. 268, L. 1959.

Amendment

The 1959 amendment inserted the words "or tract of land under one ownership" the first two times it appears and substituted the words "place or tract of land under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are" for the words "wherein gambling is."

Repealing Clause

Section 2 of Ch. 268, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 268, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 16, 1959.

Cross-Reference

See note to sec. 94-1004. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307; State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Illegal Use of Premises by Vendee

Where vendee-madam sought to void mortgage given vendor-madam on property used exclusively for prostitution, on the grounds that vendor-madam knew the property was to be used in violation of the laws and public policy of Montana, bare knowledge of the illegal purpose was not sufficient to void the contract in the absence of more active participation on the part of the seller. Carroll v. Beardon, 142 M 40, 381 P 2d 295.

Permanent Injunction during Hearing

A permanent injunction against the use of defendant's premises as a house of prostitution and an order of abatement cannot be granted pursuant to this section while a motion to strike is pending and before

issues have been finally joined. State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142.

Punch Boards

Premises wherein punch boards are operated may be abated as a nuisance inasmuch as punch boards constitute a lottery and play at lottery is gambling. Sections 84-5701, 84-5702 (since repealed) and 94-2401 which assume to authorize the use of punch boards as trade stimulators violate § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries, and therefore are invalid and do not prevent the abatement of the premises as a nuisance. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1003. (11125) County attorney to abate nuisance, etc.

Procedural Rules Applicable

A suit under the provisions of this section is a civil suit, and is governed by the same rules applicable in other injunction suits where no other statutory direction is given as to the manner in which the court shall proceed. State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142.

References

Cited or applied in Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 584; State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1004. (11126) Verification of complaint—temporary injunction.

Law Applicable

The procedure for the abatement of a nuisance per se provided by the statute is that set forth by this law and the general procedure for the issuance of an injunction in ordinary civil cases has no application. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Order Quashing Injunction Appealable

Where temporary injunction enjoining defendant from conducting the business constituting a nuisance as described in the complaint was quashed same day of issuance and an order issued enjoining defendant from operating "any of the games of chance described in the complaint contrary to the laws of the State of Montana," such order was appealable. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Quashing Injunction Prior to Hearing

Where complaint and affidavits showed prima facie that premises constituted a nuisance per se, it was error to quash the temporary injunction issued thereunder when defendant filed affidavit under provisions of section 93-4211, but injunction should have remained in effect until a hearing was had. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Verified Complaint

A complaint filed by a person other than the county attorney, if verified on information and belief pursuant to section 93-3702, is sufficient for the issuance of a temporary injunction. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

94-1007. (11129) Order of abatement—sale of fixtures, etc.

References

Cited or applied in State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142, 145.

94-1009. (11131) Owner may give bond—terms of bond, etc.

Operation and Effect

This section did not give authority to court to order the return of the property to the owners where sheriff in executing judgment made return of no gambling equipment found notwithstanding that defendants had stipulated that gambling equipment was in their possession. State ex rel. Olsen v. Craven Cigar Store, 124 M 310, 220 P 2d 1029, 1033.

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 142.

CHAPTER 11—CRIMINAL CONSPIRACY AND ILLEGAL PRACTICES IN RESTRAINT OF TRADE—TRUSTS—DISCRIMINATIONS—POOLING GRAIN WAREHOUSES—DESTROYING FOOD

94-1101. (10898) Criminal conspiracy defined and punishment fixed.

Liability of Coconspirator

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

References

Cited or applied in State v. Simon, 126 M 218, 247 P 2d 481, 485.

Bill of particulars to one accused of conspiracy to overthrow government. 5 ALR 2d 496.

94-1104. (10901) Unlawful trusts and monopolies—penalty.

Insurance Business

Since this section prohibits conspiracies in restraint of trade in the insurance business, federal district court, because of the provisions of the McCarran Act (15 U. S. C. § 1 et seq.), would have no jurisdiction of a suit for violation of the Sherman and Clayton Acts involving the business of insurance, unless the suit fell within an exception to the McCarran Act. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 280.

CHAPTER 12—CRUELTY TO ANIMALS

Section 94-1201. Overdriving animals.

94-1201. (11508) Overdriving animals. Every person who overdrives or overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or another, or deprives any animal of necessary food or drink, or shelter, in the case of household pets, or neglects or refuses to furnish it such food or drink, or shelter, in the case of household pets, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or shelter, in the case of household pets, or who willfully instigates or in any way engages in any act of cruelty to any animal, is guilty of a misdemeanor.

History: Ap. p. Sec. 144, p. 213, Bannack Stat.; re-en. Sec. 172, p. 309, Cod. Stat. 1871; re-en. Sec. 172, 4th Div. Rev. Stat. 1879; amd. Sec. 1, p. 2, L. 1881; re-en. Sec. 215, 4th Div. Comp. Stat. 1887; en. Sec. 1090, Pen. C. 1895; re-en. Sec. 8774, Rev. C. 1907; re-en. Sec. 11508, R. C. M. 1921; amd. Sec. 1, Ch. 131, L. 1965; Cal. Pen. C. Sec. 597.

Amendment

The 1965 amendment inserted "or shelter, in the case of household pets" following "food or drink" in three places.

CHAPTER 14—ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section 94-1475. Political literature to contain name of officer of organization or person publishing and producing.
94-1476. Violation of preceding section a misdemeanor.

94-1454. (10800) Political criminal libel.

Compiler's Note

This section may be partially superseded by sec. 94-1475.

94-1475. Political literature to contain name of officer of organization or person publishing and producing. It shall be unlawful for any person

to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document which is designed to aid, injure or defeat any candidate or any political party or organization or measure before the people unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization publishing, printing, mimeographing, typing or otherwise producing such dodger, bill, handbill, pamphlet or other document or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or the producer thereof with his residence and street address, if any, or his place of business.

History: En. Sec. 1, Ch. 74, L. 1951.

Title of Act

An act making it unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document designed to aid, injure or defeat any candidate or any political party or organization or measure before the people, unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization producing the same, or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or other producer thereof with his residence and street address, if any, or his place of business, and providing that violation thereof shall constitute a misdemeanor, and repealing all acts and parts of acts in conflict herewith.

94-1476. Violation of preceding section a misdemeanor. Any person who shall violate the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 74, L. 1951.

Elections⇐309.
29 C.J.S. Elections § 334.

Repealing Clause

Section 3 of Ch. 74, L. 1951 repealed all acts and parts of acts in conflict therewith.

CHAPTER 18—FALSE PERSONATION AND CHEATS

Section 94-1805. Obtaining money, property or services by false pretenses.
94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.
94-1823. Unlawful to obtain credit, goods, or service by false use of credit device.
94-1824. Unlawful to obtain communication service without intention to pay.
94-1825. Theft or unlawful retention of credit device.
94-1826. Unlawful possession of counterfeit or stolen credit device.
94-1827. Notice may be in person or in writing.
94-1828. Use of false device as evidence of knowledge of falsity.
94-1829. Credit device violation as misdemeanor or felony.
94-1830. Communications originating or terminating in state.

94-1805. (11410) **Obtaining money, property or services by false pretenses.** Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, including evidence of indebtedness, or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently receives services or gets into possession of money or property, is punishable in the same manner and to the same extent as for larceny of the money or the value of the property or services so obtained.

History: En. Sec. 933, Pen. C. 1895; re-en. Sec. 8683, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1921; re-en. Sec. 11410, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1959. Cal. Pen. C. Sec. 532.

Amendment

The 1959 amendment inserted the words "or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses"; inserted the words "receives services or" and substituted the words "the value of the property or services" for the word "property."

Application

A defendant charged under section 94-1806 with obtaining property by means of a confidence game cannot be convicted on evidence which shows that the defendant obtained such property "by false or fraudulent representation or pretenses" under this section because such crimes are separate and distinct offenses. State v. Allen, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Evidence of an Offense Not Charged in the Information

When a county officer is charged with collecting illegal fees, by presenting a claim under the name of another to the county for work which was within his duties as county surveyor it was prejudicial error for the court to admit evidence of another claim submitted by the county surveyor to the county which offense was not charged in the information (Justices Bottomly and Angstman dissenting). State v. Hale, 126 M 326, 249 P 2d 495, 496.

Information

Where a statute uses general or generic words in defining the offense the information or indictment bottomed upon that statute must specify the particular facts which constitute the offense. State v. Hale, 129 M 449, 291 P 2d 229, 232, distinguished in 135 M 449, 453, 340 P 2d 157, 160, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

An information may be drawn consistent with this section which is not vulnerable to the objection that it is bad for duplicity for charging an offense under section 94-3908 (presenting fraudulent claim to a county). State v. Hale, 129 M 449, 291 P 2d 229, 234, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Information which avers only that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. State v. Hale, 129 M 449, 291 P 2d 229, 231, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

To characterize a representation as "false" or "fraudulent" does not suffice to state the offense. The particulars in which the representations relied upon are false must appear from facts directly and positively set out. State v. Hale, 129 M 449, 291 P 2d 229, 232, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Operation and Effect

When a county officer is charged with collecting illegal fees by presenting a claim under the name of another to the county for work which was within his duties as county surveyor, the public policy of this state under section 94-5516 is that, as a matter of defense, the county officer is entitled to offer evidence of his good faith or honest mistake and the value received by the county. State v. Hale, 126 M 326, 249 P 2d 495, 496.

References

Cited or applied in State v. Keller, 126 M 142, 246 P 2d 817, 821.

Obtaining payment by debtor on valid indebtedness by false representation as criminal false pretenses. 20 ALR 2d 1266.

False representations as to income, profits, or productivity of property as fraud. 27 ALR 2d 14.

94-1806. (11411) Confidence games.

Application

Where evidence disclosed that all the defendant did, to induce the complaining witness to give him the ring, was, after she had broached the subject of oil wells, to say, in effect that he had an oil well in Louisiana from which he received $800 a month income, and that he would cut her in for $200 of that income. The jury could assume such statements were false, since, according to the complaining witness, neither the first $200 due July 15th, nor any other was ever paid to her. Defendant should have been prosecuted under section 94-1805 "obtaining money or property by false pretenses," not under this section "confidence games." State v. Allen, 128 M 306, 275 P 2d 200, 205. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Confidence or Bunco Game

It is a crime to obtain or attempt to obtain money by the use of a confidence game. State v. Hale, 134 M 131, 328 P 2d 930, 934.

Construction of Statute

The element of confidence must be present in order to maintain an action under this section. State v. Hale, 134 M 131, 328 P 2d 930, 934.

The confidence games described in this section are those whereby an elaborate scheme is developed to play upon the credulity or sympathy or some other trait of the victim. State v. Hale, 134 M 131, 328 P 2d 930, 934.

Operation and Effect

A defendant charged under this section with obtaining property by means of a confidence or bunco game cannot be convicted on evidence which shows that defendant obtained such property "by false or fraudulent representation or pretenses" under section 94-1805, because such crimes are separate and distinct offenses. State v. Allen, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by section 94-2406. State v. Hale, 134 M 131, 328 P 2d 930, 934.

94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty. Any person engaged or purporting to be engaged as an advertising agency for real property who accepts or solicits money or other considerations for himself or for any other person, in connection with the execution by an owner of real property of any contract whereby such owner authorizes such person to serve as an advertising agency for the sale of such property, and who for the purpose of inducing the owner of such property to enter into such a contract makes or procures the making of any oral or written representation of fact with respect to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract, with reasonable ground for belief that such representation is not true, or who refrains from disclosing to such owner, any matter of fact pertinent to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract is guilty of a felony and shall be imprisoned for not less than one (1) year nor more than five (5) years.

History: En. Sec. 1, Ch. 125, L. 1959.

Title of Act

An act declaring that the acceptance or solicitation of money or other considerations in connection with any contract for the advertising of real property by misrepresentation or by failing to disclose facts pertinent to such contract is a felony and prescribing a penalty; containing a repealing clause.

Repealing Clause

Section 2 of Ch. 125, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Real Estate License Act to be construed as supplemental to this section, sec. 66-1946.

94-1823. Unlawful to obtain credit, goods, or service by false use of credit device. It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or services, by the use of any false, fictitious, counterfeit or expired credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such

card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

History: En. Sec. 1, Ch. 185, L. 1965.

Title of Act

An act making it unlawful to obtain or attempt to obtain goods, property or services by false or fraudulent use of credit cards or other false or fraudulent means, and providing penalties therefor.

94-1824. Unlawful to obtain communication service without intention to pay. It shall be unlawful for any person to obtain or attempt to obtain, by the use of any fraudulent scheme, device [,] means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor.

History: En. Sec. 2, Ch. 185, L. 1965.

94-1825. Theft or unlawful retention of credit device. It shall be unlawful for any person to steal, take or remove a credit card or credit device from the person or possession of the person to whom issued, or, to retain or secrete a credit card or credit device without the consent of the person to whom issued, with the intent of using, delivering, circulating or selling or causing said card or device to be used, delivered, circulated or sold without the consent of the person to whom issued.

History: En. Sec. 3, Ch. 185, L. 1965.

94-1826. Unlawful possession of counterfeit or stolen credit device. It shall be unlawful for any person to have in his possession or under his control or to receive from another person any forged, altered, counterfeited, fictitious or stolen credit card or credit device with the intent to use, deliver, circulate or sell the same, or to permit or cause to procure the same to be used, delivered, circulated or sold, knowing the same to be forged, altered, counterfeited, fictitious or stolen.

History: En. Sec. 4, Ch. 185, L. 1965.

94-1827. Notice may be in person or in writing. The word "notice" as used in section 1 [94-1823] of this act shall be construed to include either notice given in person or notice given in writing to the person to whom the number, card or device was issued.

History: En. Sec. 5, Ch. 185, L. 1965.

94-1828. Use of false device as evidence of knowledge of falsity. The presentation or use of a false, fictitious, counterfeit, expired, unauthorized or revoked credit card, telephone number, credit number or other credit device for the purpose of obtaining credit or the privilege of making a deferred payment for the article or service purchased shall be evidence of knowledge that the said credit device is false, fictitious, counterfeit, expired, or its use is unauthorized or revoked.

History: En. Sec. 6, Ch. 185, L. 1965.

94-1829. Credit device violation as misdemeanor or felony. Any person who violates any provision of sections 1, 2, 3 or 4 [94-1823, 94-1824, 94-1825 or 94-1826] of this act shall be guilty of a misdemeanor, punishable as pro-

vided by law therefor; provided, however, that if the value of the goods or services obtained through a violation of the provisions of section 1 or 2 [94-1823 or 94-1824] of this act amounts to the sum of fifty dollars ($50) or more, or if the value of the goods or services obtained through a series of violations of section 1 or 2 [94-1823 or 94-1824] of this act committed within a period not exceeding six (6) months amounts in the aggregate to the sum of $50.00 or more, any such violation or violations shall constitute a felony and shall be punishable as provided by law therefor.

History: En. Sec. 7, Ch. 185, L. 1965.

94-1830. Communications originating or terminating in state. Sections 1 and 2 [94-1823 and 94-1824] of this act shall apply when the telephone or telegraph service or message, signal or other communications by telephone or telegraph or over telephone or telegraph facilities either originates or terminates, or both originates and terminates in this state.

History: En. Sec. 8, Ch. 185, L. 1965.

CHAPTER 20—FORGERY AND COUNTERFEITING

94-2001. (11355) Forgery of wills, conveyances, etc.

Cross-Reference

State tax stamps, counterfeiting, sec. 94-35-260.

Act Committed by Indian on Indian Reservation

State court was without jurisdiction to try an Indian for forgery of a check where the Indian attempted to cash the check on a store located within the boundaries of an Indian Reservation. The defendant is still a ward of the federal government and is still under the exclusive jurisdiction of the federal government for all acts and crimes defined and made punishable by the laws of Congress, when committed within the exterior boundaries of an Indian reservation. State ex rel. Bokas v. District Court, 128 M 37, 270 P 2d 396.

Non-negotiable Instruments

The fact that a warrant is non-negotiable does not affect the question as to whether one who passes it when containing a known forged indorsement is guilty of forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

Passing of Auditor's Warrant

The statute when speaking of indorsements while not specifically mentioning auditors' warrants does cover "orders." The indorsement of an auditor's warrant amounts to the indorsement of an order within the meaning of the statute. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

Testimony of Person Forging Indorsement as Corroboration

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument, since the person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

Unnecessary for Instrument to Create Civil Liability

It is not necessary that the forged instrument should create civil liability before it can be held to be forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

94-2004. (11358) Punishment of forgery.

References

Cited in State v. Brown, 136 M 382, 351 P 2d 219, 222.

94-2006. (11360) Possessing or receiving forged or counterfeit bills, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2007. (11361) Making, passing or uttering fictitious bills, etc.

Jurisdiction of Offense

An enrolled member of an Indian tribe was subject to prosecution in state court for forgery where check was obtained from Indian agency office on reservation but was cashed in a town outside the boundaries of the reservation. Petition of Fox, 141 M 189, 376 P 2d 726, 727.

The crime of forgery is committed in the place where the false, forged or counterfeit check is passed as true and genuine and the origin of the check has no bearing upon the crime. Petition of Fox, 141 M 189, 376 P 2d 726.

Passing False Check

The crime of forgery encompasses the passing of a check as true and genuine when in fact it is false, forged or counterfeit. Petition of Fox, 141 M 189, 376 P 2d 726.

Questions for Jury

Where defendant was charged with the crime of uttering and delivering a fictitious check, the intent to defraud and defendant's knowledge of the fictitious character of the check were questions for the jury. State v. Johnston, 140 M 111, 367 P 2d 891, 893.

Restitution

It is no defense under this section that defendant has made restitution. State v. Johnston, 140 M 111, 367 P 2d 891, 893.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2008. (11362) Counterfeiting coin, bullion, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2010. (11364) Possessing or receiving counterfeit coin, bullion, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2012. (11366) Counterfeiting railroad tickets, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

CHAPTER 24—GAMBLING

Section 94-2429. Slot machines—possession unlawful.
94-2430. Slot machine defined.
94-2431. Person or persons defined.
94-2432. Penalty for possession or permitting use of slot machine.

94-2401. (11159) Gambling games prohibited—penalty, etc.

Compiler's Note

That part of this section which relates to slot machines is probably superseded by secs. 94-2429 to 94-2432.

Cross-Reference

See note to sec. 94-2403. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Constitutionality

This act and sections 84-5701, 84-5702 (since repealed) authorizing and licensing so-called trade stimulators is void and invalid as violative of § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141, 142.

Construction of Amendment

The 1937 amendment to this section which added the licensing provisions did not affect section 94-2404. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

Prosecution of Gambling Laws

Actions for violation of the gambling laws may be prosecuted under either this section and section 94-2404 or under section 94-1001 et seq., the abatement law, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Religious, Fraternal and Charitable Organizations

Religious, fraternal and charitable organizations and private homes are by section 94-2403 exempt from the payment of license fees but are not exempt from the provisions of this act which existed prior to the 1937 amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Slot Machines

Slot machines are not included among the enumerated "hickey" games nor among the "trade stimulators" from which the ban was lifted by the 1937 amendment known as the "Hickey Law." State v. Israel, 124 M 152, 220 P 2d 1003, 1010; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Information charging defendant with the operation of slot machines was not subject to demurrer as not charging an offense. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The ban against slot machines was not lifted by sections 84-5701 and 84-5702 (since repealed). State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The operation of all slot machines is prohibited to all persons without exception. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020; State v. Tursich, 127 M 504, 267 P 2d 641, 642; State v. Porter, 130 M 299, 300 P 2d 952.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-2403. Organizations excluded from act.

Construction

The words "this act" in this section mean the licensing provisions of section 94-2401 which were added by the 1937 Act but not the remainder of such section which was in existence prior to such 1937 amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

Slot Machines

There is nothing in this law that makes it lawful for any person or any religious, fraternal or charitable organization, or any private home to run, conduct or keep any slot machine within the state of Montana. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

94-2404. (11160) Possession of gambling implements prohibited.

Cross-Reference

See note to sec. 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Effect of Other Laws

This section was not affected by the 1937 amendment to section 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020.

94-2406. (11162) Brace and bunco games prohibited.

Confidence or Bunco Game

Any game which is by this statute outlawed, may be a confidence or bunco game, for the design and conduct of those who use it gives it its character under this statute. State v. Hale, 134 M 131, 328 P 2d 930, 936.

Gambling Devices

The games described in this section are purported gambling devices so contrived, although masked as legitimate operations, to bilk the victim of his wager by manipulation. These games do not depend upon the active or passive emotions of the victim. State v. Hale, 134 M 131, 328 P 2d 930, 934.

"Morocco"

Defendant who used and dealt with game of "Morocco," a confidence game and bunco game, to win money from his victim was properly convicted of the crime prohibited by this section. State v. Hale, 134 M 131, 328 P 2d 930, 934, 935.

Penalty

The penalty of violating this statute is imposed upon every person who uses or deals with any game commonly known as a confidence game or bunco, as well as one who wins. State v. Hale, 134 M 131, 328 P 2d 930, 933.

Purpose of Statute

This statute is aimed at person who uses or deals with a confidence game, or bunco game, and not so much against the inanimate paraphernalia so used. State v. Hale, 134 M 131, 328 P 2d 930, 936.

Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by section 94-1806. State v. Hale, 134 M 131, 328 P 2d 930, 934.

Use of Confidence Game

It is a crime to use or deal with a confidence game or bunco. State v. Hale, 134 M 131, 328 P 2d 930, 934.

94-2409. (11165) Maintaining gambling apparatus a nuisance.

Operation and Effect

Any article, machine or apparatus maintained or kept in violation of any of the provisions of sections 94-2401 or 94-2404 is a public nuisance. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Slot Machines

The using, operating, keeping, and maintaining for use, of slot machines constitutes a nuisance. State ex rel. Replogle y. Joyland Club, 124 M 122, 220 P 2d 988; State v. Israel, 124 M 152, 220 P 2d 1003, 1011; State ex rel. Brown v. Buffalo Rapids Club, 124 M 172, 220 P 2d 1014.

94-2410. (11166) Duty of public officer to seize gambling implements, etc.

Decree Requiring Sale Amended

Decree requiring sheriff to sell seized slot machines was amended on appeal to require the sheriff to destroy such machines. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1001.

References

Cited or applied in State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Forfeiture of property used in connection with gaming before trial of individual offender. 3 ALR 2d 751.

94-2411. (11167) Duty of magistrate to retain gambling implement, etc.

Return of Machines Erroneous

It was error for district court to order slot machines and other gambling equipment returned to defendant on an ex parte proceeding before the disposition of the case and the order is void ab initio. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in State v. Engle, 124 M 175, 220 P 2d 1015, 1017.

94-2412. (11167.1) Disposal of moneys confiscated, etc.

Cross-Reference

See note to sec. 94-2411. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in State v. Engle, 124 M 175, 220 P 2d 1015, 1017.

94-2413. (11168) Authority to break and enter buildings where games, etc.

References

Cited or applied in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2414. (11169) Duty of public officer to make complaint.

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2416. (11171) **Officers neglecting duty subject to forfeiture of office.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2417. (11172) **Receiving money to protect offenders prohibited.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2418. (11173) **Losses at gambling may be recovered in civil action.**

Assignment of, or succession to, statutory right of action for recovery of money lost at gambling. 18 ALR 2d 999.

94-2419. (11174) **Action may be brought by any dependent person.**

References

Cited or applied in Miller v. Emerson, 120 M 380, 186 P 2d 220.

94-2423. (11178) **Immunity of witnesses.**

Privilege or Immunity Must Be Claimed

Even though it be assumed that the provisions of this section were broad enough to include testimony before a grand jury it would have no application where defendant failed to claim either privilege or immunity when called before the grand jury. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

Testimony before Grand Jury

The words "grand jury" should not be read into this section which gives immunity from prosecution to persons testifying before a "court or magistrate." State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023.

Defendant cannot, because of testimony before grand jury, be immune from prosecution for offense charged in information filed by county attorney weeks before impanelment of a grand jury. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

94-2425. (11180) **Repealed.**

Repeal

This section (Sec. 1, Ch. 20, L. 1909; Sec. 1, Ch. 92, L. 1909; Sec. 1, Ch. 55, L. 1915; Sec. 1, Ch. 103, L. 1929), relating to racing bets, was repealed by Sec. 15, Ch. 196, Laws 1965.

94-2429. Slot machines—possession unlawful. From and after the passage and approval of this act, it shall be a misdemeanor and punishable, as hereinafter provided, for any person to use, possess, operate, keep or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

History: En. Sec. 1, Ch. 197, L. 1949.

Title of Act

An act prohibiting the licensing, use, operation, keeping or maintenance of slot machines within the state of Montana; defining certain terms used in this act; providing penalties for the violation of this act and repealing all acts and parts of acts in conflict herewith; providing for a referendum on this act; and providing for local option elections in counties on the question of the licensing and operation of slot machines and specifying the procedure for holding said election.

Gaming⇐79(1).
38 C.J.S. Gaming § 99.

94-2430. Slot machine defined. A slot machine is hereby defined as a machine operated by inserting a coin, token, chip or trade check therein by the player and from the play of which he obtains, or may obtain, money,

checks, chips or tokens redeemable in money. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this act.

History: En. Sec. 2, Ch. 197, L. 1949.

94-2431. Person or persons defined. In addition to their ordinary meaning, the word "person" or "persons," as used in this act, shall include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders and societies, including religious, fraternal and charitable organizations.

History: En. Sec. 3, Ch. 197, L. 1949.

94-2432. Penalty for possession or permitting use of slot machine. Any person, partnership, club, society, fraternal order, corporation, co-operative association or any other person, individual or organization who violates any of the provisions of this act, or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied or controlled by him or it, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949.

Repealing Clause—Effective Date

Section 5 of Ch. 197, L. 1949 read, "All acts and parts of acts in conflict herewith, particularly all laws of this state and all ordinances of cities and towns relating to the issuance of licenses for the operation of slot machines, are hereby repealed and this act shall take effect and be in force and effect on and after the 31st day of December, 1950, as to sections 1 to 6, inclusive, provided a majority of the votes cast on this issue are against the operation of slot machines, and if a majority of the votes so cast are for the operation of slot machines, the act shall be in effect on said date as to sections 8 to 15, inclusive." At the general election in November, 1950, the majority of votes was against the operation of slot machines. Sections 7 to 16 of Ch. 197, L. 1949 are therefore omitted.

Separability of Provisions

Section 6 of Ch. 197, L. 1949 read, "If any part of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

CHAPTER 25—HOMICIDE

94-2501. (10953) Murder defined.

Conspiracy

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

All participants in a conspiracy may be found guilty of any of the degrees of murder or one or more may be found guilty of each degree. State v. Alton, 139 M 479, 365 P 2d 527, 538.

References

Cited or applied in State v. London, 131 M 410, 310 P 2d 571.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2502. (10954) Malice defined—express or implied.

Operation and Effect

It is not necessary to show pre-existing malice against the deceased and malice may be shown directly or may be inferred from a lack of provocation. State v. London, 131 M 410, 310 P 2d 571, 582.

Malice may be express or implied and on proof of homicide by the defendant, malice

is presumed, but the presumption does not exist in the presence of evidence tending to show that the act amounts only to manslaughter. State v. Rivers, 133 M 129, 320 P 2d 1004, 1006.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767.

Inference of malice or intent to kill where killing is by blow without weapon. 22 ALR 2d 854.

94-2503. (10955) Degrees of murder.

Felony-murder Rule

Where the evidence disclosed that the defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. State v. Morran, 131 M 17, 306 P 2d 679.

Guilty of Lesser Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767; State v. London, 131 M 410, 310 P 2d 571.

Homicide: causing one, by threats or fright, to leap or fall to his death. 25 ALR 2d 1186.

94-2505. (10957) Punishment for murder.

Commutation of Sentence

Inmate of state prison, who along with his codefendant had been sentenced to life imprisonment on plea of guilty to first degree murder, was not entitled to release from custody because his codefendant had been released from prison after commutation of his sentence by the governor. Goff v. State, 139 M 641, 367 P 2d 557, 558.

Operation and Effect

Where there is evidence sustaining finding by trial court of murder in the first degree supreme court will not interfere with trial court's determination and the sentence of death. State v. Palen, 120 M 434, 186 P 2d 223, 224.

References

Cited in Andres v. United States, 332 U S 499, 92 L Ed 104, 68 S Ct 169; Brown v. State, 202 F Supp 29, 30.

94-2507. (10959) Manslaughter—voluntary and involuntary.

Subd. 2

Acts of Omission

Omission to perform an act required by law can be the basis for manslaughter. Hence, where evidence disclosed that a child, 5 months old, died due to starvation, and that his weight at death was only 5 pounds 14 ounces which was but ten ounces over his birth weight, and that the father and mother had the means with which to care for the child, the evidence would be sufficient to support the conviction of the parents for manslaughter. State v. Bischert, 131 M 152, 308 P 2d 969.

The failure to obtain medical aid for one who is owed a duty is a sufficient degree of negligence as to constitute involuntary manslaughter provided death results from the failure to act. State v. Mally, 139 M 599, 366 P 2d 868, 872.

Burden of Proof

The state in prosecuting for manslaughter because of the failure to provide medical aid is not required as an element of their proof to show the ability on behalf of the defendant to furnish such aid. If a defendant could not obtain aid either through normal procedure or the poor laws, this is a matter for his defense. State v. Mally, 139 M 599, 366 P 2d 868, 872.

Criminal Negligence

Insofar as the offense of involuntary manslaughter is concerned, the proof of culpability is supplied by evidence of criminal negligence. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

It is wholly unnecessary in involuntary manslaughter cases to superimpose upon the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if the act is done in a manner which is criminally neg-

ligent, it thereby becomes malum in se and thereby includes the element of mens rea. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

Wilful or evil intent is not an element of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1021.

Instructions

Where judge instructed the jury in the language of the statute thereby giving the jury the definitions of both voluntary and involuntary manslaughter, defendant could not complain on ground there was no evidence of voluntary manslaughter in the case where the jury found him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Where defendant was charged with second degree murder but the court withdrew the murder charge from the jury and presented the question of the guilt or innocence of the defendant for the crime of manslaughter, an instruction charging the jury that the state must prove the "intent" alleged in the information could properly have been modified to apply to the crime of manslaughter, however, conviction will not be set aside where it appears that no prejudice resulted. State v. Allison, 122 M 120, 199 P 2d 279, 291.

Where evidence showed that defendant was drunk and that he drove his automobile at a high rate of speed into the rear of another automobile going the same direction, causing it to catch fire and killing the occupants, the contention of defendant that he could not remember the events which transpired at that time did not establish an accident and instruction on responsibility for deaths caused by accident was not necessary. State v. Souhrada, 122 M 377, 204 P 2d 792, 796.

In prosecution for involuntary manslaughter the issue is one of criminal negligence rather than intent and giving of instruction that "intent is not an element of involuntary manslaughter" was not erroneous. State v. Souhrada, 122 M 377, 204 P 2d 792, 797.

Since the word "feloniously" is not necessary in the information it was not necessary that the word "feloniously" be defined by the court's instructions and court's erroneous definition could not have been prejudicial particularly where other instructions clearly advised the jury of the elements of the crime. State v. Souhrada, 122 M 377, 204 P 2d 792, 797.

Where the court instructed the jury that in order to find the defendant guilty it must find that the defendant committed an unlawful act, not amounting to a felony, and that the unlawful act was the proximate cause of the injury and death; and then in a later instruction defined criminal negligence as such that amounts to a wanton, flagrant, or reckless disregard of consequences or wilful indifference of the safety or rights of others, the instructions taken as a whole are correct. For while the former may, standing alone, be inaccurate or even erroneous, yet as qualified and explained by other portions of the charge, in pari materia, it fully and fairly submits the case to the jury. State v. Bosch, 125 M 566, 242 P 2d 477, 480.

Intent

A wilful or evil intent is not a requirement of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1021.

Operation and Effect

This section is a recognition of the frailty of human nature, and has as its purpose to reduce a homicide committed under the circumstances therein contemplated to the grade of manslaughter. State v. Messerly, 126 M 62, 244 P 2d 1054, 1056.

Photographs in Evidence

In a prosecution of defendant for failure to provide food to an infant child which resulted in the child's death, it was error to admit into evidence photographs of the body of the child which showed ghastly and gruesome looking sores or scars alleged to have been caused by dermatitis. The charge was for failure to provide food and not for the failure to provide medical care and such photographs in no way went to the proof of starvation. Their purpose could only arouse the human feelings of the jury without aiding them in further understanding the crime charged. State v. Bischert, 131 M 152, 308 P 2d 969, 973.

Sufficiency of Evidence

Where defendant had invited another person to stay or "bunk" with him for the night, and thereafter, while in his tavern, shot through the screen and door of his bedroom striking such person who was on the other side of the door, jury was justified in returning a verdict of guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Defendant who deliberately drove his car around curve at a speed which he must have known was dangerous to human lives, those of himself and his passengers was properly convicted of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1019.

In order to convict a person for manslaughter because of failure to provide medical aid it must appear from the evidence that the defendant's failure to ob-

tain medical aid was the proximate cause of death. State v. Mally, 139 M 599, 366 P 2d 868, 872.

Sufficiency of Information

Information for manslaughter against driver of death car was sufficient where it was in the form prescribed by section 94-6404, complied with the requirements of sections 94-6403, 94-6405, and met the tests provided by section 94-6412. State v. Haley, 132 M 366, 318 P 2d 1084, 1085.

Verdict of Manslaughter on Charge of Murder

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

94-2510. (10962) Proof of corpus delicti.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 974 (concurring opinion).

94-2511. (10963) Excusable homicide.

Instructions

Refusal to give instruction under this section was not reversible error in view of other instructions given. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2512. (10964) Justifiable homicide by public officers.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2513. (10965) Justifiable homicide by other persons.

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

CHAPTER 26—KIDNAPING

Section 94-2604. Prisoner holding hostage.

94-2601. (10970.1) Kidnaping—penalty—place of trial.

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnaping. 17 ALR 2d 1003.

94-2602. (10970.2) Kidnaping with intent to send person, etc.

Question for Jury

Where defendant is charged with kidnaping with intent to secretly confine a prison guard it was a question for the jury whether defendant was acting under duress or coercion because of threats made to him by other convicts participating in riot. State v. Walker, 139 M 276, 362 P 2d 548, 550.

Sufficiency of Evidence

Defendant was guilty of confining prison guard secretly against his will where the evidence showed that defendant, an inmate of the state prison, walked behind prison guard with a knife, after another inmate had disarmed the guard, until the inmates had placed the guard in isolation. State v. Frodsham, 139 M 222, 362 P 2d 413, 419.

On the trial of defendant charged with kidnaping with intent to secretly confine a prison guard a showing of actual physical violence or threat of personal injury are not required to prove the force necessary to establish the crime. State v. Walker, 139 M 276, 362 P 2d 548, 550.

Sufficiency of Information

An information under this section is sufficient if it contains a statement of facts constituting the offense charged in ordinary and concise language so as to enable a person of common understanding to know what was intended. State v. Randall, 137 M 534, 353 P 2d 1054, 1056.

94-2604. Prisoner holding hostage. Every person committed to the Montana state prison, who, while at such state prison or while being conveyed to or from the Montana state prison, or while at a state prison farm or ranch, or while being conveyed to or from any such place, or while under the custody of prison officials, officers or employees, or while escaping or attempting to escape therefrom, holds as hostage any person within the state prison or who, unlawfully, by force or threat of force holds any person or persons against their will shall be guilty of a felony and shall be imprisoned in the state prison for a term not less than ten (10) years, such term of imprisonment to commence from the time he would have otherwise been released from said prison.

History: En. Sec. 1, Ch. 128, L. 1961.

Title of Act

An act prohibiting persons committed to the state prison from holding hostages or from unlawfully holding persons against their will and fixing the penalty therefor; and providing for an effective date.

Effective Date

Section 2 of Ch. 128, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

CHAPTER 27—LARCENY AND FALSIFICATION OF PUBLIC RECORDS AND JURY LISTS

Section 94-2702. Uttering fraudulent checks or drafts—evidence.
94-2704.1. Possession of stolen livestock as evidence of larceny.

94-2701. (11368) Larceny defined.

Agency

Where defendant was sole owner of corporate collection agency which contracted with other corporations to collect debts owed to them, defendant was an agent of the other corporations and was properly charged under that portion of this section covering embezzlement when he did not pay over agreed portions of debts which he collected on behalf of other corporation. State v. Holdren, 143 M 103, 387 P 2d 446.

Civil Liability

In action based upon indemnity bond issued by defendant to indemnify plaintiff against loss from fraud or dishonesty of its station agent, allegation in complaint that the agent while in possession of money and property belonging to plaintiff, had wrongfully and dishonestly appropriated plaintiff's products and cash money, sufficiently stated a cause of action on which to predicate civil liability. Waite v. Standard Accident Ins. Co., 132 M 220, 315 P 2d 989, 992.

Instructions

Conviction under this section requires proof of specific intent and an instruction that "when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent. The law also presumes that a person intends the ordinary consequences of any voluntary act committed by him" was erroneous. State v. Garney, 122 M 491, 207 P 2d 506, distinguished in 135 M 139, 147, 337 P 2d 924, 929.

Larceny by Indians on Indian Territory

A state district court was without jurisdiction to convict an Indian of larceny which occurred on Indian territory since under Acts of Congress (U. S. C. Tit. 18, §§ 1153, 3242) such an offense is within the exclusive jurisdiction of the United States. State v. Pepion, 125 M 13, 230 P 2d 961.

Proof of Intent

The intent required may be found from the facts and circumstances surrounding the transaction, but the mere existence of an unpaid debt does not demonstrate any intent fraudulently to appropriate the property. State v. Smith, 135 M 18, 334 P 2d 1099, 1102.

Sufficiency of Information

An information charging grand larceny by defendant, laid in the terms of this section is sufficient without particularity, so long as it enables the defendant to prepare a defense. State v. Fairburn, 135 M 449, 340 P 2d 157.

An information which charges the offense of larceny by a selling agent in the language of this section is sufficient and not vulnerable to a general demurrer; there is no requirement that the agency be detailed, and, as between owners, the amount of money stolen from each need not be particularized. State v. Fairburn, 135 M 449, 340 P 2d 157.

94-2702. (11369) **Uttering fraudulent checks or drafts—evidence.** Any person who for himself or as the agent or representative of another or as an officer of a corporation, wilfully, with intent to defraud shall make or draw or utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money upon any bank or depositary, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has no funds or insufficient funds in or credit with such bank or depositary, or person, or firm, or corporation, for the payment of such check, draft, or order in full upon its presentation, although no express representation is made with the reference thereto, shall upon conviction be punished as follows: If there are no funds in or credit with such bank or depositary, or person, or firm, or corporation, for the payment of any part of such check, draft or order, upon presentation, then in that case the person convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars ($5,000.00) or by both such fine and imprisonment; if such check, draft or order be for a sum of twenty-five dollars ($25.00) or less, and there are some but not sufficient funds in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full, then in that case the person so convicted shall be punished by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars ($300.00) or by both such fine and imprisonment; if such check, draft or order be for a sum greater than twenty-five dollars ($25.00) and there are some but not sufficient funds in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, then in that case the person so convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars ($5,000.00) or by both such fine and imprisonment. As against the maker or drawer thereof, the making, drawing, uttering or delivering of such check, draft or order as aforesaid shall be prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds, as the case may be, in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, within five (5) days after receiving notice that such check, draft, or order has not been paid by the drawee. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank, depositary, person, firm or corporation, for the payment of such check, draft or order.

History: En. Sec. 881, Pen. C. 1895; re-en. Sec. 8643, Rev. C. 1907; amd. Sec. 1, Ch. 63, L. 1919; re-en. Sec. 11369, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1957. Cal. Pen. C. Sec. 476a.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 135, Laws 1957, repealed all acts and parts of acts in conflict therewith.

Operation and Effect

Held, that where a person was convicted under this section, the proper procedure for review of errors was by appeal under the statutes and not by seeking at a later date the common-law writ of coram nobis. Were it shown that the defendant's case was exigent, as for example, that although innocent of any crime he was nevertheless arbitrarily sentenced and wrongfully imprisoned under that sentence, and if then the existing remedies by appeal as prescribed by our statutes and as well the usual writs to which this court customarily turns to prevent an injustice were found in truth inadequate, the court would not hesitate to design a further remedial writ so that the court could meet the emergency and attain the ends of justice, otherwise denied. State v. Zumwalt, 129 M 529, 291 P 2d 257, 260. (Dissenting opinion, 129 M 529, 291 P 2d 257, 262 based on the opinion that the defendant was innocent of the crime charged and arbitrarily sentenced.)

94-2704. (11371) Grand larceny defined.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show defendant's guilt that he aided or abetted in the commission of the crime under section 94-6423 because all persons concerned in the commission of a crime are principals under section 94-204. State v. Maciel, 130 M 569, 305 P 2d 335, 336.

Disposal of Stolen Property

If the crime of larceny has been completed, i. e., the taking and carrying away of the property has come to an end, then anyone subsequently assisting the thieves in the disposal of the stolen property would not be guilty of larceny. State v. Guay, 138 M 362, 357 P 2d 19, 22.

Effect of Ownership Not Proven as Alleged

Where the information alleges the ownership of the property, such allegation must be proven; proof of a brand only is not sufficient proof of the ownership of an animal bearing such brand. State v. Elmore, 126 M 232, 247 P 2d 488, 492.

Larceny by Bailee

Where defendant charged with grand larceny by bailee did not deny that he received a check from the complaining witness, but his defense was that it was a loan instead of a payment for an automobile, evidence as to whether the check was a loan or payment for the automobile was admissible over objection that it permitted a witness to vary a written instrument by parol testimony. State v. Ahl, 140 M 305, 371 P 2d 7, 9.

Defendant, who admitted title to automobile in the complaining witness and that he accepted and took custody of a check, and agreed that the money was to pay for the automobile, but failed to deliver the automobile, requiring the complaining witness to again pay for it, violated his trust as bailee by appropriating the money to his own use and was guilty of grand larceny by bailee. State v. Ahl, 140 M 305, 371 P 2d 7, 10.

Operation and Effect

Conviction for larceny cannot be sustained where the evidence connecting the defendant with the hide and asportation of a live steer amounts to no more than suspicion and conjecture. State v. Elmore, 126 M 232, 247 P 2d 488, 492.

It is grand larceny to take money from the person of another with a felonious intent no matter what the amount is that is taken. State v. Peschon, 131 M 330, 310 P 2d 591, 595.

Conviction of defendant of grand larceny of an automobile was reversed where the actual taking and asportation of the car in question was not proven. State v. Fairbanks, 140 M 243, 370 P 2d 497, 499. (Dissenting opinions, 140 M 243, 370 P 2d 497, 500.

Transporting of Stolen Property

Where one joins with a person, or persons in committing the crime of larceny and assists in the transporting and disposition of property which he knows to be stolen, he may be convicted of larceny. This is true even though the one assisting in the transporting and disposing of the stolen property was not in any manner connected with the initial taking of the property. State v. Guay, 138 M 362, 357 P 2d 19, 22.

94-2704.1. Possession of stolen livestock as evidence of larceny. The possession, claim of ownership or control over recently stolen livestock

shall be deemed prima facie evidence of guilt of larceny of that livestock unless this presumption is rebutted or contradicted by other credible evidence.

History: En. Sec. 1, Ch. 202, L. 1965.

Title of Act

An act to provide a reputable [sic] presumption that possession of recently stolen livestock shall be deemed prima facie evidence of guilt of larceny.

Repealing Clause

Section 2 of Ch. 202, Laws 1965 repealed all acts and parts of act in conflict therewith.

94-2706. (11373) Punishment of grand larceny.

Plea of Guilty

Defendant's plea of "guilty" to information charging him with grand larceny rendered him subject to a sentence of "not less than one nor more than fourteen years" imprisonment, depending upon the view taken by the trial judge of the evidence to be presented to him, in open court, showing circumstances either in aggravation or mitigation of punishment. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

The extent of defendant's punishment on plea of guilty to grand larceny should have been determined by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in sections 94-7813 and 94-7814 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

Reduction of Sentence

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations as provided in sections 94-7813 and 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

94-2717. (11384) Claim of title, ground of defense.

Evidence of Intent

Where a selling agent is charged with larceny and sets up the defense of appropriating a customer's check under claim of right as a commission, testimony of clergyman concerning conversation had between himself and accused as to prior statements made by owner to agent, is inadmissible as hearsay since it is a self-serving declaration. State v. Fairburn, 135 M 449, 340 P 2d 157.

94-2721. (11388) Receiver of stolen property.

Essential Elements of Crime

Proof that the defendant knew the property was stolen is an essential element of the crime. The evidence is not sufficient where the state relies on a bill of sale which describes "3 cow hides red no brand" and in fact the hides had brands and cattle was missing from the brand owners, while the defendant proves that when he received the hides they were bundled up and so stiffly frozen that they could not be examined to see if they had brands. State v. Gilbert, 126 M 171, 246 P 2d 814, 815.

Operation and Effect

Conviction for receiving stolen goods cannot be sustained where the information charged that the defendant received a deepfreeze knowing the same to have been stolen from the true owner, Missoula County, while the facts where that the defendant was the county surveyor and he ordered a deepfreeze from a company and charged it to the county. Since the acts of the surveyor were unlawful, the county never purchased the freezer and never had it in its possession and at no time had title to the deepfreeze; therefore, Missoula County was never the owner from whom it was stolen as charged in the information. State v. Bourdeau, 126 M 266, 246 P 2d 1037, 1038.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 348.

CHAPTER 28—LIBEL

Section 94-2807. Publishing a true report of public proceedings privileged.

94-2807. (10995) **Publishing a true report of public proceedings privileged.** No reporter, editor, or proprietor of any newspaper, nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, nor any agent or employee of any such owner, licensee, or operator, is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which is not implied from the mere fact of publication or broadcast.

History: En. Sec. 436, Pen. C. 1895; re-en. Sec. 8331, Rev. C. 1907; re-en. Sec. 10995, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1951. Cal. Pen. C. Sec. 254.

Amendment

The 1951 amendment inserted the words "nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, not any agent or employee of any such owner, licensee, or operator," and "or broadcast."

Repealing Clause

Section 2 of Ch. 13, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 13, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

CHAPTER 29—LEGISLATURE—OFFENSES AGAINST

94-2906. (10839) **Receiving bribes by members of the legislative, etc.**

References

Cited in United States v. Johnson, 215 F Supp 300, 306.

CHAPTER 30—LOTTERIES

94-3001. (11149) **Lottery defined.**

Amendment of Constitution

Proposed initiative measure No. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with sections 8 or 9, article XIX, which set forth the manner of constitutional amendment. State ex rel. Steen v. Murray, — M —, 394 P 2d 761, 764.

Initiative Measure Unconstitutional

Proposed initiative measure No. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, is unconstitutional. State ex rel. Steen v. Murray, — M —, 394 P 2d 761, 763, 764.

Numbers Games

A numbers game, whether called Chinese lottery, "The Crown Game," "The Crown punchboard game" or any other game is a lottery. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Punch Boards

Punch boards constitute a lottery. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141.

In an action for violation of this section it was no defense that the defendant had offered to pay for the operation of such punch boards in accordance with Ch. 201, Laws 1951, which purports to license trade stimulators such as punch boards since it is not competent for the legislature to authorize lotteries in view of Const. Art. 19, sec. 2 and the case of State ex rel. Harrison v. Deniff. State v. Tursich, 127 M 504, 267 P 2d 641, 642.

Slot Machines

The operation of a slot machine is a lottery and banned by the criminal laws of

this state. State v. Marck, 124 M 178, 220 P 2d 1017, 1019; State v. Read, 124 M 184, 220 P 2d 1020; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. State v. Cox, 136 M 507, 349 P 2d 104. (State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689, distinguished.)

References

Cited in State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

94-3003. (11150) Punishment for drawing lottery.

Cross-Reference

See note to sec. 94-3001. State v. Marck, 124 M 178, 220 P 2d 1017, 1019.

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-3011. (11158) Punishment.

Cross-Reference

See note to sec. 94-3001. State v. Marck, 124 M 178, 220 P 2d 1017, 1019.

CHAPTER 32—MALICIOUS INJURIES TO RAILROADS, HIGHWAYS AND OTHER PROPERTY

Section 94-3202. Injuries to milestones, guideposts, trees.
94-3203. Tampering with telegraph, telephone and electric systems—penalty.
94-3211. Removal, injury or destruction of telephone, telegraph and electric facilities—penalty.

94-3201. (11464) Repealed.

Repeal

This section (Sec. 1031, Pen. C. 1895), relating to injuries to highways and bridges, was repealed by Sec. 12-109, Ch 197, Laws 1965, effective December 31, 1966.

94-3202. (11465) Injuries to milestones, guideposts, trees. (1) Every person who maliciously removes or injures any mileboard, post, or stone, or guidepost or any inscription on such, erected on any highway, is guilty of a misdemeanor.

(2) Every person who maliciously injures or destroys any shade or ornamental tree on any highway is guilty of a misdemeanor.

History: En. Sec. 1032, Pen. C. 1895; re-en. Sec. 8737, Rev. C. 1907; re-en. Sec. 11465, R. C. M. 1921; amd. Sec. 12-107, Ch. 197, L. 1965. Cal. Pen. C. Sec. 590.

Amendment

The 1965 amendment designated the previous text as subsection (1); made a minor change therein; and added subsection (2).

94-3203. (11466) Tampering with telegraph, telephone and electric systems—penalty. Any person who maliciously and wilfully taps, or makes any connection with any telegraph or telephone line, wire, cable, or instrument, or electric power line, wire or cable belonging to another, or maliciously and wilfully reads, takes or copies any messages, communication or report intended for another passing over any such telegraph or telephone line, wire, or cable, in this state, or who wilfully and maliciously prevents, obstructs or delays by any means or contrivance whatsoever the sending,

transmission, conveyance or delivery in this state of any message, communication or report by or through any telegraph or telephone line, wire or cable or who uses any apparatus to unlawfully do or cause to be done any of the acts hereinbefore mentioned, or who aids, agrees with, employs or conspires with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars ($300.00) nor more than one thousand dollars ($1,000.00) or imprisonment in the county jail not exceeding one year, or both, in the discretion of the court. And it shall be unlawful for any person who, for nonpayment of dues, tolls, or other good and sufficient reasons, has been disconnected from service with any telephone, telegraph or electric light or power system in this state to connect or allow himself to be connected with any such company lines without direct and express permission from the official authorized to permit such reconnection. Any person or persons who shall violate or cause to be violated this provision shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) or imprisonment in the county jail for ten days, or both, in the discretion of the court.

History: En. Sec. 1033, Pen. C. 1895; re-en. Sec. 8738, Rev. C. 1907; re-en. Sec. 11466, R. C. M. 1921; re-en. Sec. 1, Ch. 66, L. 1929; amd. Sec. 2, Ch. 174, L. 1963. Cal. Pen. C. Sec. 591.

Amendment

The 1963 amendment deleted the words "displaces, removes, injures, destroys or obstructs any telegraph, telephone or electric light line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto, or maliciously and wilfully cuts, breaks" which followed "wilfully and maliciously" in the first clause of the section; and inserted "or electric power line, wire or cable" after "telephone line, wire, cable, or instrument" near the beginning of the section.

Repealing Clauses

Section 3 of Ch. 174, Laws 1963 read "Section 94-3209 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 4 of Ch. 174, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 174, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

94-3209. (11473) Repealed.

Repeal

This section (Sec. 1, Ch. 71, L. 1903), relating to interference with electric lines or apparatus, was repealed by Sec. 3, Ch. 174, Laws 1963.

94-3211. Removal, injury or destruction of telephone, telegraph and electric facilities—penalty. Any person who wilfully and maliciously displaces, removes, injures or destroys any public telephone instrument or any part thereof or any equipment or facilities associated therewith, or who enters or breaks into any coin box associated therewith, or who wilfully and maliciously cuts, breaks, displaces, removes, injures or destroys any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or an electric power line, cable, transformer, pole or conduit or facilities associated therewith belonging to another or the material or property appurtenant thereto is guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars

($1,000.00) or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment.

History: En. 94-3211 by Sec. 1, Ch. 174, L. 1963.

Title of Act

An act to amend Chapter 32 of Title 94 of the Revised Codes of Montana, 1947, relating to crimes involving malicious injuries to railroads, highways and other property, by adding thereto a new section to be numbered 94-3211, making it a felony for any person to wilfully and maliciously displace, remove, injure or destroy any public telephone instrument or part thereof or equipment or facilities associated therewith, or to enter or break into any coin box associated therewith, or to wilfully and maliciously cut, break, displace, remove, injure or destroy any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or electric power line, cable, pole, conduit or facilities associated therewith belonging to another or the material or property appurtenant thereto, and providing a penalty therefor, and by amending section 94-3203 of the Revised Codes of Montana, 1947, making it a misdemeanor to tamper with telegraph, telephone and electric systems, by deleting therefrom so much thereof as makes it a misdemeanor for any person to wilfully and maliciously displace, remove, injure, destroy or obstruct any telegraph, telephone or electric light line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto, and providing it shall be a misdemeanor to wilfully or maliciously tamper with electric power lines; repealing section 94-3209 of the Revised Codes of Montana, 1947; repealing all acts and parts of acts in conflict herewith; and providing an effective date.

CHAPTER 33—MALICIOUS MISCHIEF GENERALLY

Section 94-3334. Injury to trees on public lands.

94-3305. (11478) **Use of automobiles without consent of owners, etc.**

References

Cited or applied in the dissenting opinion in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1061; United States v. Brickles, 177 F Supp 944, 947.

94-3334. (11507) **Injury to trees on public lands.** Every person who commits a trespass on or any injury to any state lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other state lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the state for three (3) times the value of said trees or timber, or lumber into which the same are converted.

All fines collected and all moneys recovered by virtue of this section must be paid into the trust fund if the lands involved are held in trust either through deed or grant or be paid to the funds of the state departments administrating such lands where lands not held in trust are involved.

History: Ap. p. Sec. 1, p. 256, L. 1891; en. Sec. 1076, Pen. C. 1895; re-en. Sec. 8773, Rev. C. 1907; re-en. Sec. 11507, R. C. M. 1921; amd. Sec. 1, Ch. 221, L. 1955.

Amendment

The 1955 amendment substituted that part of the second paragraph beginning with the words "trust fund * * *" for "school fund of the state."

CHAPTER 35—MISCELLANEOUS OFFENSES

Section 94-3527.1. Possession of weapon by prisoner.
94-3550. Defrauding inn and hotel-keepers, etc.—penalty.
94-3565. Ditch overflowing on highway.

94-3579. Firearms—use of by children under the age of fourteen years prohibited.
94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years.
94-35-106.1. Jurisdiction of offenses.
94-35-106.2. Possession of beer or liquor by minor—misdemeanor.
94-35-123. Unlawful to dispense mescal button.
94-35-204. Stolen livestock—seizure and confiscating of vehicle used to transport.
94-35-221.1. Failure to relinquish party line or telephone for emergency call—penalty.
94-35-221.2. Lack of knowledge as defense—emergency as defense.
94-35-221.3. False pretext of emergency—penalty.
94-35-221.4. Printing of act in directories.
94-35-258. Endurance races of horses prohibited.
94-35-259. Penalty for running endurance horse race.
94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.
94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number.
94-35-262. Altering, defacing or removing serial number on farm machinery.
94-35-263. Penalty.
94-35-264. Furnishing certain articles to and receiving articles from prisoners in state prison—receiving such articles by prisoners—felony.
94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty.
94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.
94-35-270. Delivery of grain containing toxic chemicals to public warehouses.
94-35-271. Penalty for violation.
94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances.
94-35-271.2. Sale or offering for sale product in violation of act prohibited.
94-35-271.3. Violation constitutes misdemeanor.
94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty.
94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors.
94-35-274. Recording of conversation without knowledge of parties prohibited,
94-35-275. Public officials and public meetings exempt — warning of recording.

94-3506. (10921) Arrests, seizure or levy upon property, etc.

False imprisonment: liability of private citizen for false arrest by officer. 21 ALR 2d 643.

94-3509. (10940) Attorneys forbidden to defend prosecutions, etc.

Improper Representation

Where prisoner was represented in a second case by court-appointed counsel who had formerly prosecuted him while serving as county attorney in a case resulting in the prior conviction with which he was charged in the second case, the error, if any, should have been raised in the district court by a writ of error coram nobis and not by habeas corpus proceeding in the supreme court. Butler v. State, 139 M 437, 365 P 2d 822, 823.

94-3513. (11296) Repealed.

Repeal

This section (Sec. 752, Pen. C. 1895), relating to boxing and wrestling matches, was repealed by Sec. 4, Ch. 171, Laws 1953.

94-3525. (11302) **Carrying certain concealed weapons in cities, etc.**

Forfeiture of weapon unlawfully carried, before trial of individual offender. 3 ALR 2d 752.

94-3527. (11304) **Same—who excepted from act.**

References

Cited or applied in State v. Nickerson, 126 M 157, 247 P 2d 188, 192.

94-3527.1. Possession of weapon by prisoner. Every prisoner committed to the Montana state prison, who, while at such state prison, or while being conveyed to or from the Montana state prison, or while at a state prison farm or ranch, or while being conveyed to or from any such place, or while under the custody of prison officials, officers or employees, possesses or carries upon his person or has under his custody or control without lawful authority, a dirk, dagger, pistol, revolver, sling-shot, sword-cane, billy, knuckles made of any metal or hard substance, knife, razor, not including a safety razor, or other deadly weapon, is guilty of a felony and shall be punishable by imprisonment in the state prison for a term not less than five (5) years nor more than fifteen (15) years. Such term of imprisonment to commence from the time he would have otherwise been released from said prison.

History: En. Sec. 1, Ch. 131, L. 1961.

Title of Act

An act relating to deadly weapons; prohibiting the carrying or possession of deadly weapons by persons committed to the Montana state prison and fixing the penalty therefor; and providing for an effective date.

Effective Date

Section 2 of Ch. 131, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

94-3540. (10944) **Criminal contempt.**

Contempt for disobedience of orders in criminal matters where beyond court's jurisdiction. 12 ALR 2d 1059.

Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group. 19 ALR 2d 388.

94-3550. (11579) **Defrauding inn and hotel-keepers, etc.—penalty.** Any person who shall put up at any inn or hotel, mobile home park, tourist camp grounds, as defined by section 69-112, R. C. M. 1947, restaurant, cafe, apartment, rooming or boardinghouse, or hospital, and who shall (except where credit is given by agreement) procure any food, entertainment or accommodation without paying therefor and with intent to cheat and defraud the owner or keeper thereof out of his pay for same, or who, with intent to cheat and defraud such owner or keeper out of the pay thereof, shall obtain credit at any hotel or inn, mobile home park, tourist camp grounds, restaurant, cafe, apartment, rooming or boardinghouse or hospital for such food, entertainment or accommodation by means of any false show of baggage or effects brought thereto, or shall with such intent remove or cause to be removed any baggage or effects from any hotel or inn, mobile home park, tourist camp grounds, restaurant, cafe, apartment, rooming or boardinghouse, or hospital, where there is a lien existing thereon

for the proper charges due from such guest for fare and board furnished therein shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding three months or by fine not exceeding one hundred dollars and cost, or both such fine and imprisonment.

History: En. Sec. 2514, Civ. C. 1895; re-en. Sec. 5177, Rev. C. 1907; amd. Sec. 1, Ch. 9, L. 1917; re-en. Sec. 11579, R. C. M. 1921; amd. Sec. 1, Ch. 219, L. 1965. Cal. Pen. C. Sec. 537.

Amendment

The 1965 amendment inserted "mobile home park, tourist camp grounds, as defined by section 69-112, R. C. M. 1947" for "mobile home park, tourist camp grounds" after "inn or hotel" or "hotel or inn" in three different places.

Repealing Clause

Section 2 of Ch. 219, Laws 1965 repealed all acts and parts of acts in conflict therewith.

94-3565. (11531) **Ditch overflowing on highway.** Every person who owns, constructs or uses a ditch or flume, and allows the water therein to flow onto a public highway, or in or upon the property of another, is punishable by a fine not exceeding one hundred dollars ($100).

History: En. Sec. 1162, Pen. C. 1895; re-en. Sec. 8835, Rev. C. 1907; re-en. Sec. 11531, R. C. M. 1921; amd. Sec. 12-108, Ch. 197, L. 1965.

Amendment

The 1965 amendment inserted "constructs or uses" after "owns"; and substituted "flow onto" for "overrun the side and run into" before "a public highway."

Repealing Clause

Section 12-109 of Ch. 197, Laws 1965 read: "Sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201, 16-2202, 16-2203, 16-2204, 16-3311, 16-3312, 32-102, 32-103, 32-104, 32-105, 32-106, 32-107, 32-201, 32-202, 32-203, 32-204, 32-205, 32-206, 32-207, 32-208, 32-302, 32-303, 32-304, 32-305, 32-306, 32-307, 32-308, 32-309, 32-310, 32-311, 32-312, 32-313, 32-314, 32-316, 32-401, 32-402, 32-403, 32-404, 32-405, 32-406, 32-407, 32-408, 32-409, 32-410, 32-411, 32-412, 32-413, 32-415, 32-416. 32-501, 32-502, 32-503, 32-504, 32-505, 32-506, 32-507, 32-509, 32-510, 32-511, 32-512, 32-513, 32-514, 32-515, 32-516, 32-517, 32-518, 32-519, 32-520, 32-521, 32-522, 32-523, 32-524, 32-525, 32-526, 32-601, 32-602, 32-701, 32-702, 32-703, 32-704, 32-705, 32-706, 32-707, 32-708, 32-709, 32-710, 32-711, 32-713, 32-714, 32-715, 32-901, 32-902, 32-903, 32-904, 32-905, 32-1002, 32-1003, 32-1004, 32-1005, 32-1006, 32-1007, 32-1008, 32-1009, 32-1010, 32-1012, 32-1013, 32-1014, 32-1016, 32-1301, 32-1601, 32-1602, 32-1603, 32-1604, 32-1604.1, 32-1605, 32-1606, 32-1606.1, 32-1607, 32-1608, 32-1609, 32-1610, 32-1613, 32-1614, 32-1615, 32-1615.1, 32-1615.2, 32-1615.3, 32-1616, 32-1617, 32-1618, 32-1620, 32-1622, 32-1623, 32-1624, 32-1625, 32-1626, 32-1801, 32-1802, 32-1803, 32-1804, 32-1901, 32-1902, 32-1903, 32-1904, 32-1905, 32-1906, 32-1907, 32-1908, 32-1909, 32-1910, 32-1911, 32-1912, 32-1913, 32-1914, 32-1915, 32-2001, 32-2002, 32-2003, 32-2004, 32-2005, 32-2006, 32-2007, 32-2008, 32-2009, 32-2009.1, 32-2010, 53-615, 53-615.1, 53-616, 53-617, 53-618, 53-619, 53-621, 53-622, 53-623, 53-628, 53-629, 53-630, 53-631, 53-634, 53-635, 53-636, 53-637, 53-638, 53-639, 53-643, 84-1812(1), 84-1812(2), 84-1815, 84-1817, 89-821, 89-822, 94-3201, R. C. M. 1947, are repealed."

Separability Clause

Section 12-110 of Ch. 197, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 12-111 of Ch. 197, Laws 1965 read "This act shall be effective on December 31, 1966."

94-3573. (11567) **Repealed.**

Repeal

This section (Sec. 1, Ch. 66, L. 1907), relating to the showing of motion pictures depicting crimes, was repealed by Sec. 1, Ch. 52, Laws 1959, effective February 26, 1959.

94-3576. (10988) **False imprisonment, definition and punishment.**

Failure to Take Person Promptly before Magistrate

In an action for false imprisonment brought by plaintiff against a sheriff and the surety on his official bond based on unnecessary delay in taking plaintiff before a magistrate, it was necessary that the plaintiff prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. Rounds v. Bucher, 137 M 39, 349 P 2d 1026.

94-3579. (11565) **Firearms—use of by children under the age of fourteen years prohibited.** It shall be unlawful for any parent, guardian, or other person, having the charge or custody of any minor child under the age of fourteen years, to permit such minor child to carry or use any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of such parent or guardian or under the supervision of a qualified firearms safety instructor, who has been duly authorized by such parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R. C. M. 1921; amd. Sec. 1, Ch. 139, L. 1963.

Amendment

The 1963 amendment added "or under the supervision of a qualified firearms safety instructor, who has been duly authorized by such parent or guardian" at the end of the section.

Effective Date

Section 2 of Ch. 139, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

94-35-102, 94-35-103. (11314, 11259) **Repealed.**

Repeal

These sections (Sec. 1, Ch. 84, Laws 1903 and Sec. 696, Pen. C. 1895), relating to the prohibition against Indians carrying firearms while off the reservation, were repealed by Sec. 1, Ch. 12, Laws 1953.

94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years. Any person who shall sell, give away or dispose of intoxicating liquor tc any persons under the age of twenty-one (21) years, shall for the first offense be subject to punishment not exceeding five hundred dollars ($500.00) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under twenty-one (21) years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes.

History: En. Sec. 1, Ch. 143, L. 1949.

Compiler's Note

The section appearing in the parent volume (Sec. 1, Ch. 122, Laws 1927 as amended Sec. 1, Ch. 124, Laws 1941 and appearing in Revised Codes 1935 as Sec. 11048.1) was held to have been impliedly repealed by Ch. 105, Laws 1933 in State v. Holt, 121 M 459, 194 P 2d 651, and was specifically repealed by Sec. 3, Ch. 143, Laws 1949, and therefore the law set out above (Sec. 1, Ch. 143, Laws 1949) covering the same subject-matter has been given the same section number.

Title of Act

An act preventing the selling or giving away of intoxicating liquor to persons under twenty-one (21) years of age; pro-

viding penalties therefor: and repealing Section 11048.1 as amended by Chapter 124 of the Laws of the Twenty-seventh Legislative Assembly of the State of Montana, 1941, and all other acts and parts of acts in conflict herewith.

Alcoholic Content of Beer

It is not necessary that the information or the evidence show the alcoholic content of the beer in order to obtain a conviction. State v. Winter, 129 M 207, 285 P 2d 149, 156.

Construction

Under the above statute the selling to a minor is an offense without regard to whether the defendant had a license to sell or not. State v. Winter, 129 M 207, 285 P 2d 149, 155.

Entrapment

Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. State v. Parr, 129 M 175, 283 P 2d 1086, 55 ALR 2d 1313. (Dissenting opinion, 129 M 175, 283 P 2d 1086, 1090.)

Operation and Effect

Misrepresentation of age by a minor is not a defense and a seller of intoxicating beverages must know the age of the purchaser and whatever false representations are made or precautions taken are immaterial where, in fact, the purchaser is under the age of twenty-one. State v. Paskvan, 131 M 316, 309 P 1019, 1021.

The purchaser under the age of twenty-one is not an accomplice to the seller. The purchaser has committed a crime too, but his is knowingly misrepresenting his qualifications for the purpose of obtaining liquor under section 4-413 the penalty for which is found in section 4-439. State v. Paskvan, 131 M 316, 309 P 2d 1019, 1020.

Proof of Offense

Corpus delicti may be proved by evidence that the defendant poured minor a drink from a bottle marked "Vodka." State v. Moore, 138 M 379, 357 P 2d 346, 348.

Validity

This section was not impliedly repealed by section 4-330 as amended by chapter 166, Laws of 1951. State v. Winter, 129 M 207, 285 P 2d 149, 156.

References

Cited or applied in State v. Wild, 130 M 476, 305 P 2d 325, 327.

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

94-35-106.1. Jurisdiction of offenses. In cases of prosecution for first offenses under this act, the justice courts and district courts of the state of Montana shall have concurrent original jurisdiction. In all other cases the district courts of the state of Montana shall have exclusive original jurisdiction for violation of the provisions of this act.

History: En. Sec. 2, Ch. 143, L. 1949.

Repealing Clause

Section 3 of Ch. 143, Laws 1949 repealed section 11048.1, Revised Codes 1935, as amended by chapter 124, Laws 1941 and all other acts or parts of acts in conflict therewith.

Validity

This section was not repealed by implication by the amendment of section 4-413 by Ch. 71, Laws 1953. State v. Wild, 130 M 476, 305 P 2d 325, 328.

Any amendment of this section by Ch. 71, Laws 1953 (4-413) is governed by the provisions of section 43-510 which provides that "where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted but the portions which are not altered are to be considered as having been the law from the time when they were enacted." State v. Wild, 130 M 476, 305 P 2d 325, 328.

There is nothing in Ch. 71, Laws 1953 (4-413) which conflicts with the provisions of this section. State v. Wild, 130 M 476, 305 P 2d 325, 328.

References

Cited or applied in State v. Winter, 129 M 207, 285 P 2d 149, 155.

94-35-106.2. Possession of beer or liquor by minor—misdemeanor. Any person who shall not have reached the age of twenty-one (21) years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 125, L. 1957.

Title of Act

An act prohibiting the possession of beer and liquor by persons under the age of twenty-one (21) years; providing a penalty.

94-35-107. (11048.2) **"Intoxicating liquor" defined.**

Vodka

While this section does not use the word vodka it does make any beverage containing more than one-half of one per cent of alcohol an intoxicating liquor and the court may take judicial notice of the commonly accepted and generally understood definition of the word "vodka" under section 93-501-1. State v. Wild, 130 M 476, 305 P 2d 325, 334.

94-35-122. (10948) **Maliciously procuring warrant.**

References

Cited in Wolf v. Colorado, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-123. (3202.1) **Unlawful to dispense mescal button.** That it shall be unlawful for any person, firm, corporation or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or have in his or its possession Peyote (Pellote), botanically known as Lophophora Williamsii; or Agava Americana, commonly known as the Mescal Button; or any compound, derivative, or preparation thereon; provided that the terms of this act shall not apply to transporting, possession or using said Peyote for religious sacramental purposes by any bona fide religious organization incorporated under the laws of the state of Montana.

History: En. Sec. 1, Ch. 22, L. 1923; amd. Sec. 1, Ch. 53, L. 1957.

Amendment

The 1957 amendment added the proviso clause.

Repealing Clause

Section 2 of Ch. 53, Laws 1957 repealed all acts or parts of acts in conflict therewith.

94-35-143. (10952) **Oppression and injury by an officer.**

References

Cited in Wolf v. Colorado, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-152. (11572) **Repealed.**

Repeal

This section (Sec. 1, Ch. 32, L. 1911), relating to labeling of prison-made goods, was repealed by Sec. 101, Ch. 199, Laws 1965.

94-35-152.1 to 94-35-152.18. Repealed.

Repeal

These sections (Secs. 1 to 18, Ch. 162, L. 1953; Sec. 229, Ch. 147, L. 1963), relating to prison industries, were repealed by Sec. 101, Ch. 199, Laws 1965.

94-35-153 to 94-35-162. (11573 to 11573.9) **Repealed.**

Repeal

These sections (Sec. 2, Ch. 32, Laws 1911; Secs. 1 to 9, Ch. 172, Laws 1933; amd. Sec. 1, Ch. 9, Ex. L. 1933), relating to prison-made goods, were repealed by Sec. 19, Ch. 162, Laws 1953 effective March 3, 1953.

94-35-167. (11231) **Public nuisances defined.**

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-35-169. (10928) **Public officers—resisting in the discharge, etc.**

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified as for violation of this section since plaintiff had right to possession of the check. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

94-35-204. (11552.1) **Stolen livestock—seizure and confiscating of vehicle used to transport.** The use of any vehicle for the transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, hogs, poultry, or the products of either thereof, shall be unlawful and such vehicle shall be forfeited to and confiscated by the state. Any such vehicle found in such use, or upon probable cause believed to be devoted wholly or in part to such use, shall be seized and held and, upon conviction in a proceeding in the name of the state of Montana against such vehicle, or against such vehicle and the owner, before any district court or judge thereof, shall be confiscated and sold; provided that such vehicle shall not be confiscated, or subject to forfeiture, if the same be a stolen vehicle at the time it is used for such unlawful transportation and the owner thereof is not in collusion with the party or parties guilty of the theft.

History: En. Sec. 1, Ch. 80, L. 1931; amd. Sec. 1, Ch. 132, L. 1963.

Amendment

The 1963 amendment substituted "mule, horse, mare, colt, foal, filly, sheep, lamb" for "sheep" in the first sentence.

94-35-216. (11039) **Sunday—certain activities on, forbidden.**

Construction of statute or ordinance prohibiting or regulating sports and games on Sunday. 24 ALR 2d 813.

94-35-221.1. Failure to relinquish party line or telephone for emergency call—penalty. Any person who fails to relinquish a telephone party line or a public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department, or for medical or spiritual aid or ambulance service, is punishable by imprisonment for not more than ten (10) days or by a fine of not more than twenty-five dollars ($25.00) or by both such imprisonment and such fine.

History: En. Sec. 1, Ch. 206, L. 1961.

Title of Act

An act relating to use of telephones, to provide a penalty for failure to relinquish a party line or public pay telephone in an emergency; and to provide a penalty for false representation of an emergency in order to use a party line or public pay telephone.

94-35-221.2. Lack of knowledge as defense—emergency as defense. It is a defense to prosecution under section 1 [94-35-221.1] of this act that the accused did not know or did not have reason to know of the emergency in question, or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

History: En. Sec. 2, Ch. 206, L. 1961.

94-35-221.3. False pretext of emergency—penalty. Any person who requests another to relinquish a telephone party line or a public pay telephone on the pretext that he must place an emergency call, knowing

such pretext to be false, is punishable by imprisonment for not more than ten (10) days or by a fine of not more than twenty-five dollars ($25.00) or by both such imprisonment and such fine.

History: En. Sec. 3, Ch. 206, L. 1961.

94-35-221.4. Printing of act in directories. Every telephone company doing business in this state shall print a copy of sections 1, 2 and 3 [94-35-221.1 to 94-35-221.3] of this act in each telephone directory published by it after the effective date of this act.

History: En. Sec. 4, Ch. 206, L. 1961.

94-35-258. Endurance races of horses prohibited. It shall be unlawful for any person, firm, corporation, association or organization within the state of Montana to sponsor, promote, conduct, or participate in sponsoring, promoting or conducting any horse race, commonly known as an endurance race, for a distance of more than two (2) miles.

History: En. Sec. 1, Ch. 27, L. 1949.

Title of Act

An act prohibiting endurance races of more than two miles; providing a penalty; and repealing all acts in conflict.

Animals⊂=40.
3 C.J.S. Animals § 70.

94-35-259. Penalty for running endurance horse race. Any person, firm, corporation, association, or organization violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred fifty dollars ($250.00) or more than five hundred dollars ($500.00) or by imprisonment in the county jail of not less than ninety [90] days or more than one [1] year.

History: En. Sec. 2, Ch. 27, L. 1949.

Repealing Clause

Section 3 of Ch. 27, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Animals⊂=41.
3 C.J.S. Animals § 75.

94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty. (a) Every person required by law to affix any tax stamp or insignia of the state of Montana, to or upon any article to evidence the payment of a tax or license thereon, who shall fail, neglect or refuse to affix such stamp or insignia thereto, or to affix it in the proper place, or to cancel it, in the manner and as required by law, or as required by rules and regulations of the state board of equalization of this state when charged with administering any act relating thereto, or who shall wilfully remove any such affixed stamp or insignia from any such article and affix it to another such article required by law to be so stamped or marked, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than one hundred dollars ($100.00), nor more than three hundred dollars ($300.00), or by both such fine and imprisonment.

(b) Every person without authority of law, who shall wilfully make, print, manufacture, counterfeit, or attempt to make, print, manufacture or counterfeit any such stamp or insignia of the state of Montana or of any other state, or who shall, without authority of law, have in his possession

any such counterfeit stamp or insignia, die, equipment or material for the making, printing, manufacturing or counterfeiting of any such stamp or insignia, or who shall be concerned therewith, is guilty of a felony and shall be punished by imprisonment in the state prison not less than one (1) year, nor more than five (5) years, or by a fine of not less than one thousand dollars ($1,000.00), nor more than five thousand dollars ($5,000.00), or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 43, L. 1949.

Title of Act

An act relating to tax stamps or insignia of the state of Montana; providing penalty for counterfeiting any such stamp or insignia, or having possession thereof, or being concerned therewith; prescribing penalty for re-using any such stamp or insignia, and for failure or refusal to properly affix any such stamp or insignia, or to properly cancel any such stamp.

Repealing Clause

Section 2 of Ch. 43, Laws 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 43, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 23, 1949.

Counterfeiting⇐6; Licenses⇐40.
20 C.J.S. Counterfeiting § 9; 53 C.J.S. Licenses § 66.

94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number. No person, firm or corporation shall import, or cause to be imported into the state of Montana any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; nor transport, sell, offer for sale or otherwise dispose of any such farm implements or machinery within the state of Montana knowing the same to have been imported in violation of this act.

History: En. Sec. 1, Ch. 167, L. 1953.

Title of Act

An act prohibiting the importation into Montana of farm implements or machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; prohibiting the destruction, removal, alteration, covering or defacing of the serial numbers on farm implements or machinery; prohibiting the transportation or offering for sale, selling or otherwise disposing of farm implements or machinery knowing the same to have been imported into Montana in violation of this act and providing penalties for the violating hereof.

94-35-262. Altering, defacing or removing serial number on farm machinery. No person, firm, association or corporation shall destroy, remove, alter, cover, or deface the manufacturer's serial numbers from any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery having such numbers.

History: En. Sec. 2, Ch. 167, L. 1953.

94-35-263. Penalty. Any wilful violation of any of the provisions of this act shall constitute a misdemeanor.

History: En. Sec. 3, Ch. 167, L. 1953.

94-35-264. Furnishing certain articles to and receiving articles from prisoners in state prison—receiving such articles by prisoners—felony. (1) A person may not furnish or attempt to furnish to an inmate of the state

prison, nor may an inmate receive or attempt to receive any of the following items without the consent of the warden:

(a) Any liquid containing one-half of one per cent (½ of 1%) or more of alcohol by volume which is fit for use for a beverage.

(b) Knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, money or clothing other than that issued at the prison.

(2) A person, including a member of the correctional staff, may not receive or attempt to receive from an inmate, for his own use or for transmittal to another inmate or some one outside the prison, any money, merchandise, or messages.

(3) A person who violates this section is punishable upon conviction, by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars ($10,000), or both.

History: En. Sec. 1, Ch. 177, L. 1953; amd. Sec. 77, Ch. 199, L. 1965.

Title of Act

An act providing that any person who without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner confined in the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half (½) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, clothing, or money to such prisoner, or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars ($10,000), or both.

Amendment

The 1965 amendment divided this section into numbered subsections and lettered paragraphs; inserted new provisions in subsection (2); and made numerous minor changes in phraseology and punctuation.

Repealing Clause

Section 2 of Ch. 177, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 177, Laws 1953 provided the act should be in effect upon its passage and approval. Approved March 4, 1953.

Prisons⇐17½.
72 C.J.S. Prisons § 22.

94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty. Any person, firm or corporation abandoning or discarding in any place accessible to children any refrigerator, icebox or ice chest, of a capacity of one and one-half cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars ($50.00), or imprisoned not more than thirty (30) days, or both.

History: En. Sec. 1, Ch. 126, L. 1955.

Title of Act

An act providing penalties for abandoning or discarding refrigerators, iceboxes or ice chests with attached doors or lids in places accessible to children; providing persons knowingly permitting such conditions to exist to be negligent in addition to penalties and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 126, Laws 1955 repealed all acts and parts of acts in conflict therewith.

94-35-266 to 94-35-268. Repealed.

Repeal

These sections (Secs. 1-3, Ch. 139, L. 1955; Sec. 1, Ch. 15, L. 1957), relating to life saving equipment on boats, were repealed by Sec. 20, Ch. 285, Laws 1959, effective March 18, 1959.

94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor. Any person who, in the act of pursuing, taking or killing game animals or game birds, shall act in a careless or reckless manner, or with wanton disregard of human life or property, or who knowingly fails to give all reasonable assistance to any person whom he has injured or wounded, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and upon conviction thereof, be punished as provided by law.

History: En. Sec. 1, Ch. 189, L. 1955.

Title of Act

An act providing for the prosecution of careless, reckless and negligent hunters, and for imposing of penalties upon conviction thereof.

94-35-270. Delivery of grain containing toxic chemicals to public warehouses. It shall be unlawful for any person, firm, corporation or association, to deliver to any public warehouse, any grain in bulk, if such grain contains toxic chemicals, providing such person, firm, corporation or association knew, or upon the exercise of reasonable diligence, could have known of the presence of toxic chemicals in the grain.

History: En. Sec. 1, Ch. 9, L. 1957.

Title of Act

An act making it unlawful to deliver to any public warehouse any grain in bulk containing toxic chemicals if the person, firm, corporation or association delivering such grain knew, or by the exercise of reasonable diligence, could have known, of the presence of such toxic chemicals; providing that such delivery shall constitute a misdemeanor and providing penalties therefor; and repealing all acts and parts of acts in conflict herewith.

94-35-271. Penalty for violation. Any person, firm, corporation or association violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500.00) and not less than two hundred fifty dollars ($250.00) or be imprisoned for not more than six (6) months and not less than thirty (30) days, or both.

History: En. Sec. 2, Ch. 9, L. 1957.

Repealing Clause

Section 3 of Ch. 9, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances. Any wheat, oats, rye or barley treated with any injurious or toxic substance or chemical shall at the same time be colored or dyed a color contrasting with the natural color of such wheat, oats, rye or barley, so that the treated wheat, oats, rye or barley is readily identifiable as having been treated with an injurious or toxic substance or chemical.

History: En. Sec. 1, Ch. 80, L. 1959.

Title of Act

An act to provide for the coloration of wheat, oats, rye or barley when being treated with an injurious or toxic substance or chemical, providing a penalty; and repealing all acts or parts of acts in conflict herewith.

94-35-271.2. Sale or offering for sale product in violation of act prohibited. No person, firm, corporation or association shall sell or offer for sale, any wheat, oats, rye or barley which has been treated with any injurious or toxic substance or chemical unless the wheat, oats, rye or barley has been colored or dyed a color contrasting with the natural color of the wheat, oats, rye or barley. This act shall not apply to the treatment of any wheat, oats, rye or barley which solely is for the killing of insects which might be present therein. Provided, however, that if such treatment uses any injurious or toxic substance for the killing of insects, then such grain must be colored or dyed as hereinabove provided if offered for sale.

History: En. Sec. 2, Ch. 80, L. 1959.

94-35-271.3. Violation constitutes misdemeanor. Any person, firm, corporation or association violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 80, L. 1959.

Repealing Clause

Section 4 of Ch. 80, Laws 1959 repealed all acts and parts of acts in conflict therewith.

94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty. Every person who shall wilfully operate or use any aircraft without the consent of the owner, or who shall wilfully interfere or tamper with any aircraft without the consent of the owner, or who shall wilfully put into operation the engine of any aircraft without the consent of the owner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six (6) months or by a fine of not more than five hundred dollars ($500.00) or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 83, L. 1957.

Title of Act

An act making it a misdemeanor for any person to wilfully use or operate any aircraft, or wilfully interfere or tamper with any aircraft, or wilfully put into operation the engine of any aircraft, without the consent of the owner; providing a penalty for such offense; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 83, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors. Every person who carries or bears upon his person or who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him or who owns, possesses, uses, stores, gives away, sells or offers for sale, a switch blade knife shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment in the county jail for a period not exceeding six (6) months or by both such fine and imprisonment; provided, that a bona fide collector, whose collection is registered with the sheriff of the county in which said collection is located, is hereby exempted from the provisions of this act. For the purpose of this section a switch blade knife

is defined as any knife which has a blade one and one-half (1½) inches long or longer, which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957.

Title of Act

An act making it a criminal offense for any person to own, possess, carry, sell or display a switch blade knife, defining a switch blade knife, making it a criminal offense and providing a punishment therefor; providing for the effective date of said act and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 243, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 243, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

94-35-274. Recording of conversation without knowledge of parties prohibited. It shall be unlawful to record or cause to be recorded by use of any hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Violation hereof shall constitute a misdemeanor.

History: En. Sec. 1, Ch. 228, L. 1965.

Title of Act

An act making the transcription or recording of human conversation without the knowledge of the parties thereto a misdemeanor; and excepting public officials and employees when in the performance of official duty; and persons speaking at public meetings or given warning of any such recording.

94-35-275. Public officials and public meetings exempt—warning of recording. Section 1 [94-35-274] of this act shall not apply to duly elected or appointed public officials or employees when such transcription or recording is done in the performance of official duty; and persons speaking at public meetings or given warning of such recording.

History: En. Sec. 2, Ch. 228, L. 1965.

CHAPTER 36—OBSCENITY—LITERATURE—INDECENT EXPOSURE —HOUSES OF ILL FAME—PROHIBITION OF CERTAIN ADVERTISEMENTS

Section 94-3601. Obscene literature not to be given to or sold by minors.
94-3602. Penalty.
94-3604. Seizure of indecent articles authorized.
94-3605. Their character to be summarily determined.
94-3606. Their destruction.

94-3601. (11134) **Obscene literature not to be given to or sold by minors.** (1) It is unlawful for any person to sell, lend, give away, distribute, resell, or redistribute, show, or have in his possession with intent to sell, give away, distribute, resell, or redistribute, or to show or advertise or otherwise offer for loan, gift, or distribution, to any minor child, under the age of eighteen (18) years, any book, pamphlet, magazine, newspaper, lewd picture, story paper, so-called comic book, or other printed, mimeographed or published matter, devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of lust or crime, or portraying sexually indecent conduct or subject-matter, or portraying the planning or committing of deeds

of crime, violence, horror, brutality, immorality or vice. It shall be unlawful to exhibit upon any street or highway, or in any place within the view of any minor child under the age of eighteen (18) years, or to hire, use, employ, or permit such child to sell or give away or in any manner distribute any such book, pamphlet, magazine, lewd picture, newspaper, story paper, so-called comic book or publication or other printed, mimeographed, or published matter above described.

(2) The prohibitions and penalties imposed hereby shall not extend to publications within any constitutional guarantee of freedom of the press or freedom of religious worship, nor to publications privileged for medical instruction, privileged as official law enforcement bulletins or publications, nor to publications or reproductions of bona fide works of literature and the fine arts.

(3) No person shall, as a condition to a sale or delivery for resale of any publication not above-described or not within the purview of the foregoing section, require that the purchaser or consignee receive for resale or redistribution any other publication or article whatsoever within or reasonably believed by such purchaser or consignee to be within the purview of the foregoing section.

History: En. Secs. 1, 2, p. 255, L. 1891; amd. Sec. 560, Pen. C. 1895; re-en. Sec. 8391, Rev. C. 1907; re-en. Sec. 11134, R. C. M. 1921; amd. Sec. 1, Ch. 214, L. 1955.

Amendment

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

Constitutionality

Justice Frankfurter in his dissenting opinion in the Winters Case considered this to be one of the statutes throughout the country that would fall under the majority decision in that case as "void for vagueness." Winters v. New York, 333 U S 523, 92 L Ed 853, 68 S Ct 674.

94-3602. (11135) **Penalty.** (1) Every person violating any of the provisions of the next preceding section is guilty of a misdemeanor, and provided further that upon the second and each subsequent conviction thereunder, a jail sentence is mandatory.

History: En. Sec. 561, Pen. C. 1895; re-en. Sec. 8392, Rev. C. 1907; re-en. Sec. 11135, R. C. M. 1921; amd. Sec. 2, Ch. 214, L. 1955.

Amendment

The 1955 amendment added the proviso clause.

Separability Clause

Section 3 of Ch. 214, Laws 1955 read "If any clause, sentence, paragraph, section, subdivision or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision or part directly adjudged to be invalid, inoperative or unconstitutional."

Repealing Clause

Section 4 of Ch. 214, Laws 1955 repealed all acts or parts of acts in conflict therewith.

94-3604. (11137) **Seizure of indecent articles authorized.** Every person who is authorized or enjoined to arrest any person for a violation of section 94-3601 (2) or (3), is equally authorized and enjoined to seize any obscene matter found in possession, or under the control of the person so arrested, and to deliver the same to the district court.

History: En. Sec. 563, Pen. C. 1895; re-en. Sec. 8394, Rev. C. 1907; re-en. Sec. 11137, R. C. M. 1921; amd. Sec. 1, Ch. 230, L. 1965. Cal. Pen. C. Sec. 312.

Amendment

The 1965 amendment substituted the reference to section 94-3601(2) and (3) for a reference to subdivision 3 of section 94-3603; substituted "obscene matter" for "obscene or indecent writing, paper, book, picture, print, or figure"; and substituted "the district court" for "the magistrate before whom the person so arrested, is required to be taken."

94-3605. (11138) **Their character to be summarily determined.** If the seizure be controverted, the district court to whom any obscene matter is delivered pursuant to the foregoing section or to the return of a search warrant must, within ten (10) days after service of the motion for restoration proceed to take testimony in relation thereto. A decision as to whether there is a probable cause to believe the seized material to be obscene shall be rendered by the court within two (2) days of the conclusion of the restoration proceedings.

History: En. Sec. 564, Pen. C. 1895; re-en. Sec. 8395, Rev. C. 1907; re-en. Sec. 11138, R. C. M. 1921; amd. Sec. 2, Ch. 230, L. 1965. Cal. Pen. C. Sec. 313.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

94-3606. (11139) **Their destruction.** Upon the conviction of the accused, such county attorney must cause any obscene matter, in respect whereof the accused stands convicted and which remains in the possession or under the control of such county attorney, to be destroyed.

History: En. Sec. 565, Pen. C. 1895; re-en. Sec. 8396, Rev. C. 1907; re-en. Sec. 11139, R. C. M. 1921; amd. Sec. 3, Ch. 230, L. 1965. Cal. Pen. C. Sec. 314.

Amendment

The 1965 amendment substituted "obscene matter" for "writing, paper, book, picture, print or figure."

94-3608. (11141) **Keeping disorderly houses.**

Illegal Use of Premises by Vendee

Where the vendee-madam sought to void mortgage given vendor-madam on property used exclusively for prostitution, on the grounds that vendor-madam knew the property was to be used in violation of the laws and public policy of Montana, bare knowledge of the illegal purpose was not sufficient to void the contract in the absence of more active participation on the part of the seller. Carroll v. Beardon, 142 M 40, 381 P 2d 295.

CHAPTER 38—PERJURY—SUBORNATION OF PERJURY

94-3801. (10878) **Perjury defined.**

Venue

Where prosecution for perjury is founded upon a false affidavit which was notarized in Lake County and delivered to Lewis and Clark County, apparently by mail, by virtue of section 94-3809, the crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the proper county for venue was Lake County and not Lewis and Clark County. State v. Rother, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393, at 397 and 409.)

94-3802. (10879) **Oath defined.**

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393, 395.

94-3806. (10883) Irregularity in administering oath.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393, 394; (Dissenting opinion, 130 M 357, 303 P 2d 393 at 410.)

94-3808. (10885) Knowledge of materiality of testimony not necessary.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 410 (dissenting opinion).

94-3809. (10886) Making depositions, etc., when deemed complete.

Crime—When Complete

Under this section the crime of perjury is complete when the instrument is delivered by the accused to "any other person, with the intent that it be uttered or published as true." State v. Rother, 130 M 357, 303 P 2d 393, 395. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

Venue

Where prosecution for perjury is founded upon a false affidavit which was notarized in Lake County and delivered to Lewis and Clark County, apparently by mail, by virtue of this section the crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the proper county for venue was Lake County and not Lewis and Clark County. State v. Rother, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

94-3811. (10888) Punishment of perjury.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 410 (dissenting opinion).

CHAPTER 39—PUBLIC OFFICERS—OFFENSES BY

94-3908. (10828) Presenting fraudulent bills or claims for allowance, etc.

Operation and Effect

An information may be drawn consistent with section 94-1805 (obtaining money under false pretenses) which is not vulnerable to the objection that it is bad for duplicity for charging an offense under this section. State v. Hale, 129 M 449, 291 P 2d 229, 234. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236), distinguished in 135 M 449, 453, 340 P 2d 157, 160, overruled on another point in 142 M 459, 462, 384 P 2d 749.

94-3918. (10923) Confessions obtained by duress, etc.

Confession Not Used in Proceedings

Where defendant's confession to murder was not introduced before the court at any stage in the proceedings, he was not allowed to withdraw his plea of guilty on the grounds that the confession was obtained from him illegally. Petition of Pine, 143 M 453, 391 P 2d 690.

Drugs

Where a sedative was given to a wounded defendant about an hour before he signed a confession to murder charge, the administration of the sedative did not make the confession ipso facto inadmissible and the determining question was whether at the time of the confession it was made voluntarily and of his free will. State v. Noble, 142 M 284, 384 P 2d 504.

References

Dryman v. State, 139 M 141, 361 P 2d 959.

94-3920. (10925) Importing persons to discharge duties, etc.

Operation and Effect

This section did not change the common-law rule respecting a sheriff's liability in damages. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

CHAPTER 41—RAPE AND OTHER SEXUAL CRIMES

Section 94-4106. Lewd and lascivious acts upon children.
94-4120. Child under age of sixteen cannot be accomplice.

94-4101. (11000) Rape defined.

Evidence of Other Offenses

Where defendant was charged with attempted rape upon a female child under the age of 18 years, the admission of a transcribed statement in the form of questions by the county attorney and answers by the defendant showing that defendant had been warned about going out with girls under 18 and could have been charged with rape of a girl other than the prosecutrix, was prejudicial, was not waived by defendant's introduction of evidence to meet that of the state, and was of such nature that it could not be cured. State v. Tiedemann, 139 M 237, 362 P 2d 529, 532.

Federal Law as to Indians

In the prosecution of an Indian for the crime of rape committed upon a 13-year-old female Indian on a reservation, an information which failed to charge that force had been employed or that consent of the victim was lacking failed to state an offense under the federal law which adopted the state law definition of rape. United States v. Rider, 282 F 2d 476.

Where an Indian was charged with rape of an Indian girl under eighteen on a reservation, the indictment failed to state an offense under the federal statute (18 U. S. C. § 1153), providing that an Indian who commits rape as defined by state law shall be imprisoned at the discretion of the court, because "rape" does not include "carnal knowledge" as rape is defined in this section, and because the federal law distinguishes between rape and carnal knowledge. United States v. Red Wolf, 172 F Supp 168.

Partial Repeal

Since this section is repealed by implication by Laws of 1943, Ch. 227 (10-601 et seq.), and the amendments thereof, insofar as it is in conflict with the substance and intent thereof, district criminal court was prohibited from trying child under the age of 16 years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497, 499.

Statutory Rape

Any man who accomplishes an act of sexual intercourse with a female under the age of 18 years, when such female is not his wife, is guilty of the crime of statutory rape. The corpus delicti is sufficiently proved by the testimony of the prosecutrix that she had sexual intercourse with the accused at the time and place set forth in the information. State v. Reid, 127 M 552, 267 P 2d 986, 991.

References

Cited in State v. Lawrence, 122 M 277, 201 P 2d 756; State v. Sauter, 125 M 109, 232 P 2d 731, 734.

Bill of particulars to one accused of rape. 5 ALR 2d 559.

Inclusion or exclusion of day of birth in computing age of prosecutrix. 5 ALR 2d 1153.

Exclusion of women from juries in prosecutions for rape. 9 ALR 2d 661.

94-4102. (11001) When physical ability must be proved.

Partial Repeal

Laws 1943, Ch. 227 (10-601 et seq.), and the amendments thereof have repealed by implication this section and section 94-4101, insofar as they conflict with the substance and intent thereof and district criminal court was prohibited from trying child under the age of 16 years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497, 499.

94-4106. (11005) Lewd and lascivious acts upon children. Any person over the age of eighteen (18) years, who shall wilfully and lewdly commit any lewd and lascivious act, other than the acts constituting other crimes provided in sections 94-4101 to 94-4108, upon or with the body or any part or member thereof, of a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, or of such child, shall be guilty of a felony, and shall be imprisoned in the state prison not exceeding twenty-five (25) years.

History: En. Sec. 1, Ch. 59, L. 1913; re-en. Sec. 11005, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1935; amd. Sec. 1, Ch. 57, L. 1959.

Amendment

The 1959 amendment raised the penalty in this section from five years to twenty-five years.

Age as Defense

The portion of this section giving an exemption to prosecution to a person under the age of eighteen years is a matter of defense, and negation thereof is not a necessary part of the information. State v. Davis, 141 M 197, 376 P 2d 727, 729.

Evidence of Similar Acts

Where alleged lewd and lascivious acts upon the person of a minor child below the age of 16 years were committed on or about March 19, 1955, it was improper to permit state to show similar acts to those charged as having been committed on August 4, 1951, and in June 1951 in the State of California because of the remoteness in time. State v. Nicks, 134 M 341, 332 P 2d 904, 905, 77 ALR 2d 836.

Information Held Sufficient

An information under this section was sufficient although it did not allege the age of the defendant. State v. Davis, 141 M 197, 376 P 2d 727, 729.

Subsequent Offense

A defendant convicted of a lewd and lascivious act upon a child under this section was properly sentenced to a term of not less than 10 years on a subsequent offense, pursuant to subd. 1 of section 94-4713, where the jury found that he had previously been convicted of lewd and lascivious acts upon a child. In re Davis' Petition, 139 M 622, 365 P 2d 948, 949.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to prove intent to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. State v. Green, 143 M 234, 388 P 2d 362.

94-4109. (11008) Importation and exportation of females, etc.

Constitutionality

This section (94-4109) is void since Congress has legislated upon this matter in the Mann Act (U. S. C. Tit. 18, §§ 2421-2424). This section then, being in contravention of a valid law of the United States, is wholly void. Ex Parte Anderson, 125 M 331, 238 P 2d 910, 911, 912.

94-4118. (11030) Crime against nature.

Penetration by Mouth

The infamous crime against nature may be committed by penetration of the mouth. (following State v. Hoyt Guerin, 51 M 250, 152 P 747.) State v. Dietz, 135 M 496, 343 P 2d 539, 541.

Where Accomplice's Testimony Insufficiently Corroborated

Where the corroborating evidence to the testimony of the accomplice showed that accomplice slept with the defendant and stayed overnight at defendant's house on several occasions, such evidence was insufficient to sustain the conviction as it does nothing more than show opportunity on the part of defendant to have committed the crime. State v. Gangner, 130 M 533, 305 P 2d 338.

References

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 996; State v. Shambo, 133 M 305, 322 P 2d 657.

94-4119. (11031) Penetration sufficient to complete the crime.

Operation and Effect

There must be penetration before a person can be convicted of the infamous crime against nature. State v. Shambo, 133 M 305, 322 P 2d 657, 658.

94-4120. Child under age of sixteen cannot be accomplice. No child under the age of sixteen (16) years can be an accomplice to the commission or attempted commission of the infamous crime against nature.

History: En. Sec. 1, Ch. 68, L. 1951; amd. Sec. 1, Ch. 145, L. 1957.

Title of Act

An act declaring a child under the age of fourteen years incapable of being an accomplice to the infamous crime against nature.

Amendment

The 1957 amendment substituted "sixteen (16) years" for "fourteen (14) years" and inserted the words "or attempted commission."

Repealing Clauses

Section 2 of Ch. 68, Laws 1951 and Sec. 2 of Ch. 145, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 68, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 23, 1951.

CHAPTER 42—RESCUES AND ESCAPES

94-4202. (10865) Retaking goods from custody of officer.

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified as for violation of this section since officer did not have check in his possession under any process of law. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

94-4203. (10866) Escapes from state prison—punishment.

Consecutive Sentence

An escape sentence runs consecutively and not concurrently with the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Parole

The granting of a parole to an escape sentence by virtue of the wording of this section did not result in a discharge of the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

This section does not deal with paroles and therefore, does not stand for the proposition that an inmate, who has escaped from prison, must serve his entire original sentence in prison plus his escape sentence upon apprehension before being considered for parole. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

The word "discharge" as used in this section does not mean "release on parole." State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Sequence of Consecutive Sentences

Where petitioner was sentenced to serve consecutive sentences for escape and using an automobile without the consent of the owner, but the warden executed the sentences in a sequence reverse to that indicated by the court, there was no infringement on his rights and his petition for writ of habeas corpus was denied. Petition of Cheadle, 143 M 327, 389 P 2d 579.

Speedy Trial upon Escape Charge

Petitioner, who was presently confined in the United States penitentiary at Leavenworth, Kansas, applied to the supreme court of Montana for writ of mandate to require the district court of Powell County, Montana, to grant him a speedy trial on an escape charge, averring that a detainer had been filed with that institution by the warden of the Montana state prison to which he had been sentenced to terms of eight years and five years to run concurrently. Since records showed that he had escaped from custody after having served one year, two months and thirteen days of his sentences and he would be returned to the state prison to complete his unexpired sentences, the application was denied by the supreme court. In re Well's Petition, 139 M 611, 362 P 2d 420, 421.

References

Cited or applied in State ex rel. Ball v. Burrell, 129 M 585, 292 P 2d 144.

CHAPTER 43—ROBBERY

94-4301. (10973) Robbery defined.

Fear

Under this section a robbery victim is put in the fear required by section 94-4302 when he is forced to look down the barrel of a 45-caliber automatic pistol held by a stranger whose purpose is to rob the victim. State v. Erickson, 141 M 118, 375 P 2d 314, 316.

94-4302. (10974) **What fear may be an element in robbery.**

Presumption

It is reasonable to presume fear where a robbery victim is forced to look down the barrel of a 45-caliber automatic pistol held by a stranger whose purpose is to rob his victim. State v. Erickson, 141 M 118, 375 P 2d 314, 316.

94-4303. (10975) **Punishment of robbery.**

References

State v. Knight, 143 M 27, 387 P 2d 22.

CHAPTER 44—SEDITION—CRIMINAL SYNDICALISM—DISPLAY OF RED FLAG—SUBVERSIVE ORGANIZATIONS

Section 94-4411. Subversive Organization Registration Law—title of act.
94-4412. Purpose of act.
94-4413. Subversive organization defined.
94-4414. Organization subject to foreign control defined.
94-4415. Exceptions from definition of subversive organization.
94-4416. Organization pursuant to law—no exemption.
94-4417. Rules and regulations.
94-4418. Information filed with secretary of state.
94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state.
94-4420. Change of officers or purposes—filing with secretary of state.
94-4421. Semiannual statement of members.
94-4422. Report of meetings authorizing political action.
94-4423. Statements filed with secretary of state are public records.
94-4424. Anonymous letters prohibited.
94-4425. Penalty of organization for violating act.
94-4426. Penalty of officer of organization.
94-4427. Penalty of member of organization.

94-4411. Subversive Organization Registration Law—title of act. This act may be cited as the "Subversive Organization Registration Law."

History: En. Sec. 1, Ch. 215, L. 1951.

Title of Act

An act providing for the registration of certain societies, corporations, associations, political parties, assemblies, and other bodies and organizations; defining "subversive organizations," and requiring such organizations to file reports, documents and information with the secretary of state, and providing for the making of rules and regulations by the secretary of state; prohibiting the sending and delivery to nonmembers of letters, leaflets, and other written or printed matter, unless the same bears the name of such organization and the names and addresses of its officers; and providing penalties for violations of this act.

94-4412. Purpose of act. This act is adopted in the exercise of the police power of this state for the protection of the public peace and safety by requiring the registration of subversive organizations which are conceived and exist for the purpose of undermining and eventually destroying the democratic form of government in this state and in the United States.

History: En. Sec. 2, Ch. 215, L. 1951.

94-4413. Subversive organization defined. As used in this title, "subversive organization" means every corporation, association, society, camp, group, political party, assembly, and everybody or organization composed of two [2] or more persons or members, which comes within all or any of the following descriptions:

(a) Which directly or indirectly advocates, advises, teaches, or practices, the duty, necessity, or propriety of controlling, conducting, seizing, or overthrowing the government of the United States, of this state, or of any political subdivision thereof by force or violence;

(b) Which is subject to foreign control as defined in section 4 [94-4414] hereof.

History: En. Sec. 3, Ch. 215, L. 1951.

94-4414. Organization subject to foreign control defined. An organization is "subject to foreign control" if it comes within either of the following descriptions:

(a) It solicits or accepts financial contributions, loans, or support of any kind directly or indirectly from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or political subdivision thereof, a political party in a foreign country, or an international political organization;

(b) Its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, a political party in a foreign country, or an international political organization.

History: En. Sec. 4, Ch. 215, L. 1951.

94-4415. Exceptions from definition of subversive organization. "Subversive organization" does not include any labor union or religious, fraternal, or patriotic organizations, society, or association whose objectives and aims do not contemplate the overthrow of the government of the United States, of this state or of any political subdivision thereof by force or violence.

History: En. Sec. 5, Ch. 215, L. 1951.

94-4416. Organization pursuant to law—no exemption. This act imposes additional requirements upon corporations, associations, or organizations which are subversive organizations. Neither the fact that such a corporation, association, or organization was organized pursuant to law nor that its affairs and activities are in any respect regulated by law exempts it from complying with this title.

History: En. Sec. 6, Ch. 215, L. 1951.

94-4417. Rules and regulations. The secretary of state may adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title, and may alter, amend, or repeal such rules and regulations.

History: En. Sec. 7, Ch. 215, L. 1951.

94-4418. Information filed with secretary of state. Every subversive organization in existence on July 1, 1951, shall within thirty (30) days after that date, and every subversive organization thereafter organized shall within ten (10) days after its organization, file with the secretary

of state, on such forms and in such detail as he may prescribe, the following information and documents:

(a) A complete and detailed statement subscribed, under oath, by all of its officers, showing all of the following:

(1) Its name and post office address;

(2) The names and addresses of all its branches, chapters, and affiliates;

(3) The names, nationalities, and residence addresses of its officers and members, and the qualifications required for membership in it;

(4) The nature and extent of its existing and proposed aims, purposes, and activities;

(5) The times and places of its meetings;

(6) The description and location of the real property and the kind, quantity, and quality of the personal property owned by it, its assets and liabilities, the methods for the financing of its activities, and the names and addresses of all persons, organizations, and other sources who or which have contributed money, property, literature, or other things of value to the organization or any of its branches, chapters or affiliates for any of its purposes;

(7) Such other information as the secretary of state may from time to time require.

(b) A true copy, certified by all of its officers, of all of the following:

(1) Its charter, articles of association, or constitution, and its by-laws, rules, and regulations;

(2) Its oath, affirmation, or pledge of membership, if any;

(3) Each agreement, resolution, and other instrument or document relating to its organization, powers, and purposes, and the powers and duties of its officers and members;

(4) Each book, pamphlet, leaflet, or other printed, written, or illustrated matter directly or indirectly issued or distributed by it or in its behalf, or to or by its members with its knowledge, consent, or approval;

(5) Such other documents as the secretary of state may from time to time require.

(c) A description of the uniforms, badges, insignia, or other means of identification prescribed by it, and worn or carried by its officers or members, or any of such officers or members.

(d) In case it is subject to foreign control, a statement of the manner in which it is subject.

History: En. Sec. 8, Ch. 215, L. 1951.

94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state. Every subversive organization shall within ten (10) days after any revision or amendment of, or other change with respect to, its charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or any part thereof, file with the secretary of state a true copy certified by all of its officers of the revised, amended, or changed charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or part thereof.

History: En. Sec. 9, Ch. 215, L. 1951.

94-4420. Change of officers or purposes—filing with secretary of state. Every subversive organization shall within ten (10) days after a change has been made in its officers, or in its aims, purposes, activities, property holdings, or methods and sources of financing its activities, file with the secretary of state a statement subscribed under oath by all of its officers showing the change.

History: En. Sec. 10, Ch. 215, L. 1951.

94-4421. Semiannual statement of members. Every subversive organization shall at least once in each period of six (6) months file with the secretary of state a statement subscribed under oath by all of its officers showing the names and residence addresses of all persons who have been admitted to membership during that period or, if no members have been admitted during that period, a statement to that effect similarly subscribed.

History: En. Sec. 11, Ch. 215, L. 1951.

94-4422. Report of meetings authorizing political action. Every subversive organization shall within ten (10) days after the adoption thereof file with the secretary of state, on such form and in such detail as he may prescribe, each resolution adopted, or the minutes of any meeting held by it, authorizing or providing for concerted action by its officers, members, or a part of its membership, to promote or prevent the passage of any act of legislation by any local, state, or federal legislative body, or to support or defeat any candidate for public office.

History: En. Sec. 12, Ch. 215, L. 1951.

94-4423. Statements filed with secretary of state are public records. All statements or documents filed with the secretary of state under this title [94-4411 to 94-4427] are public records and shall be open to public examination and inspection at all reasonable hours.

History: En. Sec. 13, Ch. 215, L. 1951.

94-4424. Anonymous letters prohibited. A subversive organization shall not send, deliver, mail or transmit, or suffer or permit to be sent, delivered, mailed, or transmitted, to any person in this state who is not a member of the organization any anonymous letter, document, leaflet, or other written or printed matter. All letters, documents, leaflets, or other written or printed matter issued by a subversive organization which are intended to come to the attention of a person who is not a member of the organization shall bear the name of the organization and the name and residences of its officers.

History: En. Sec. 14, Ch. 215, L. 1951.

94-4425. Penalty of organization for violating act. Any subversive organization which violates any provisions of this title [94-4411 to 94-4427] is guilty of a felony punishable by fine of not less than one thousand dollars ($1,000.00) nor more than ten thousand dollars ($10,000.00). Any such violation constitutes a separate and distinct offense for each day, or part thereof, during which it is continued.

History: En. Sec. 15, Ch. 215, L. 1951.

94-4426. Penalty of officer of organization. Any officer or member of the board of directors, board of trustees, executive committee, or other similar governing body of a subversive organization who violates any provision of this title [94-4411 to 94-4427], or permits or acquiesces in the violation of any provision of this title by the organization is guilty of a felony punishable by fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00), or by imprisonment in a state prison for not less than six (6) months nor more than five (5) years, or by both.

History: En. Sec. 16, Ch. 215, L. 1951.

94-4427. Penalty of member of organization. Any person who becomes or remains a member of any subversive organization, or attends a meeting thereof, with knowledge that the organization has failed to comply with any provision of this title [94-4411 to 94-4427], is guilty of a misdemeanor punishable by fine of not less than ten dollars ($10.00) nor more than one thousand dollars ($1,000.00), or by imprisonment in the county jail for not less than ten (10) days nor more than one (1) year, or by both.

History: En. Sec. 17, Ch. 215, L. 1951.

Separability of Provisions

Section 18 of Ch. 215, L. 1951 read, "If any provision of this act or the application thereof to any person, corporation, association, organization, or circumstances, is for any reason held invalid, ineffective, or unconstitutional by a court of competent jurisdiction, the remainder of this act, or the application of such provision to other persons, corporations, associations, organizations, or circumstances, shall not be affected thereby, and the legislative assembly hereby declares the severability of the several sections and provisions of this act, and that it would have enacted the same without the invalid provisions or the invalid applications, as the case may be, had such invalidity been apparent."

CHAPTER 47—PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS

Section 94-4716.1. Commencement of term for offense committed by prisoner under sentence.
94-4720. Civil rights of convict suspended.

94-4701. (11581) Acts made punishable by different provisions, etc.

Proof of Previous Conviction

A prior foreign conviction must be charged and proved before the court is bound to fix a minimum penalty based thereon. State v. Brown, 136 M 382, 351 P 2d 219, 222.

94-4708. (11588) Removal from office for neglect of official duty.

Operation and Effect

This section does not restrain or limit the power of the governor to remove the third member of the unemployment compensation commission. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-4710. (11590) Attempts to commit crime, when punishable.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1061 (dissenting opinion); State v. Shambo, 133 M 305, 322 P 2d 657, 658.

94-4711. (11591) Attempts to commit crime, how punishable.

References

Cited or applied in State v. Dietz, 135 M 496, 343 P 2d 539, 540.

94-4713. (11593) Second offense, how punished after conviction, etc.

Charge of Previous Conviction

Charging the defendant with a prior conviction of a felony did not deprive him of a fair trial. Petition of Noller, 143 M 301, 387 P 2d 301.

Identity of Person under Prior Conviction

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

Lewd and Lascivious Act upon a Child

Defendant convicted of a lewd and lascivious act upon a child under section 94-4106, which carried a penalty of imprisonment not exceeding 25 years, was properly sentenced to a term of not less than 10 years on a subsequent offense, pursuant to subd. 1 of this section, where the jury found that he had previously been convicted of lewd and lascivious acts upon a child. In re Davis' Petition, 139 M 622, 365 P 2d 948, 949.

Pleading of Prior Conviction

When a prior conviction is set forth in the information it does not constitute a second prosecution for a public offense for which defendant has once been prosecuted. In re Bean's Petition, 139 M 625, 365 P 2d 936, 937.

Proof of Nature of Crime

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

Proof of Previous Conviction

A prior foreign conviction must be charged and proved before the court is bound to fix a minimum penalty based thereon. State v. Brown, 136 M 382, 351 P 2d 219, 222.

It was not a denial of fair trial to allow the jury to consider the proven and admitted fact that the defendant in a first degree assault case had been convicted of three prior felonies, where only one would have served to increase the punishment under this section, when jury was instructed that the prior convictions were to be considered only in fixing the punishment, if and when the defendant was found guilty of the assault charge. Petition of Jones, — M —, 393 P 2d 780.

Where record indicated that petitioner for writ of habeas corpus had sustained a prior felony conviction and that under this section he might have received the same sentence for second degree burglary with a prior offense as he did receive for first degree burglary, it did not show that petitioner was not prejudiced by not being fully informed as to the difference between first and second degree burglary, as a prior conviction was not charged or established. Jones v. State, 235 F Supp 673, 678.

References

Cited or applied in State v. Dietz, 135 M 496, 343 P 2d 539, 540; State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318; Petition of Jones, 142 M 622, 387 P 2d 300; State v. Knight, 143 M 27, 387 P 2d 22; State v. Pelke, 143 M 262, 389 P 2d 164.

94-4715. (11595) Foreign conviction for former offense.

Identity of Person under Prior Conviction

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

Proof of Conviction

A prior foreign conviction must be charged and proved before the court is bound to fix a minimum penalty based thereon. State v. Brown, 136 M 382, 351 P 2d 219, 222.

Proof of Nature of Crime

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

94-4716.1. Commencement of term for offense committed by prisoner under sentence. The term of imprisonment fixed by judgment in a criminal action for a felony perpetrated by a person who was then under sentence of commitment to the state prison and while confined at such prison or while being conveyed to or from said prison or while awaiting conveyance or transfer to said prison or while unlawfully absent from said

prison, shall commence at the termination of the term of imprisonment for which said person was then committed or under sentence at the time said subsequent offense was committed.

History: En. Sec. 1, Ch. 130, L. 1961.

Title of Act

An act providing for the time of commencement of term of imprisonment in the state prison fixed by judgment rendered when person then under sentence of commitment to the state prison; and to provide for an effective date.

Effective Date

Section 2 of Ch. 130, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

Sequence of Consecutive Sentences

Where petitioner was sentenced to serve consecutive sentences for escape and using an automobile without the consent of the owner, and the warden executed the sentences in a sequence reverse to that indicated by the court, there was no infringement on his rights and his petition for writ of habeas corpus was denied. Petition of Cheadle, 143 M 327, 389 P 2d 579.

94-4717. (11597) When term of imprisonment commences, etc.

Repeal by Implication

The enactment of chapter 21 of the Laws of 1913 repealed this section by implication as far as any application to suspended sentence is concerned. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

Second Conviction

Relator was convicted of the crime of burglary in the first degree. After serving one year and six days he was released from prison pending appeal. The conviction was reversed upon such appeal and a new trial ordered. Upon the new trial he was again convicted and sentenced for the same period as the first, ten years. During his second incarceration he was not entitled to credit against the second sentence for time served under the first sentence. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318.

94-4720. (11600) **Civil rights of convict suspended.** A sentence of imprisonment in the state prison for any term less than life suspends all the civil rights of the person so sentenced, and forfeits all public offices and private trusts, authority, or power, during such imprisonment. The governor has power to restore to citizenship any person convicted of any offense committed against the laws of the state, upon cause being shown, either after the expiration of sentence, or after pardon. The governor may request an investigation by the board of pardons to determine if such restoration to citizenship be advisable.

History: En. Sec. 154, p. 217, Bannack Stat.; re-en. Sec. 186, p. 313, Cod. Stat. 1871; re-en. Sec. 213, 4th Div. Rev. Stat. 1879; re-en. Sec. 279, 4th Div. Comp. Stat. 1887; amd. Sec. 1239, Pen. C. 1895; re-en. Sec. 8904, Rev. C. 1907; re-en. Sec. 11600, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1955. Cal. Pen. C. Sec. 673.

Amendment

The 1955 amendment added the second and third sentences.

Effective Date

Section 2 of Ch. 87, Laws 1955 provided the act should be in effect from and after April 1, 1955.

94-4723. (11603) Convict competent witness.

Proper Method to Impeach

Where a defendant upon cross-examination admits his prior convictions of felonies it is error for the court to then allow the state to introduce into evidence the judgment record of prior convictions, for it serves no useful purpose since the credibility has already been impeached and it may weigh too heavily against the defendant. State v. Coloff, 125 M 31, 231 P 2d 343, 344.

Testimony of Accomplice

An accomplice may testify in a criminal case even though he is a convicted felon at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 48—RIGHTS OF DEFENDANT

94-4801. (11606) No person punishable but on legal conviction.

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-4804. (11609) Parties to a criminal action.

Operation and Effect

In a criminal case the state is the opposite party to the defendant, and former section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. State v. Moorman, 133 M 148, 321 P 2d 236, 238.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-4806. (11611) Rights of defendant in a criminal action.

Discharge of Court-appointed Counsel

Where court-appointed counsel failed to advise the clerk's office as to what would be required for the record on appeal, as required by section 94-8112, from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal and the cause was remanded to the district court for revocation of appointment of present counsel and appointment of competent and effective counsel to properly prosecute the appeal. State v. Bubnash, 139 M 517, 366 P 2d 155, 158.

Where defendant charged with burglary was granted the services of court-appointed counsel he did not have the right to discharge such counsel unless he was able to provide counsel at his own expense or desired to undertake his own defense. However, upon a proper showing, such counsel could be discharged by the trial court. Peters v. State, 139 M 634, 366 P 2d 158, 159.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in sections 94-7813 and 94-7814 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362.

Impartial Jury

Trial court was in error for refusing to grant the defendant a change of venue where evidence disclosed that local newspaper had fanned the feeling of the community against the defendant, that the local people believed the defendant to be guilty, and that the county officials themselves felt that the feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Right to Appear and Defend by Counsel

By section 94-6512 a defendant is guaranteed counsel by appointment of the court, if he cannot himself employ an attorney. It is equally the duty of the court to make the appointment of counsel effective, i. e., to give court-appointed counsel a reasonable time for the preparation of his case after he has been appointed. State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is the duty of the court to make the appointment effective by giving a reasonable time for the preparation of the case. State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

94-4807. (11612) Second prosecution for the same offense, etc.

Pleading of Prior Conviction

When a prior conviction is set forth in the information it does not constitute a second prosecution for a public offense for which defendant has once been prosecuted. In re Bean's Petition, 139 M 625, 365 P 2d 936, 937.

CHAPTER 49—DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS —JURISDICTION OF COURTS

94-4905. (11619) Who are magistrates.

References

Cited in State ex rel. Harrison v. District Court, 135 M 365, 340 P 544, 547.

94-4910. (11624) Leave to file information.

Sufficiency of Facts in Information

Where the motion for leave to file the information disclosed that decedent was shot at close range with a high powered rifle and killed on defendant's farm, that the coroner's jury verdict was that the killing was intentional, that evidence of the commission of the crime and guilt of the defendant was introduced at a habeas corpus hearing, that the county attorney had made a complete investigation, and that as a result he believed the defendant was guilty, the motion was sufficient to grant leave to file information. State v. London, 131 M 410, 310 P 2d 571, 581.

94-4911. (11625) Order of court granting.

Discretion of Court

Under this section the court may grant leave or require examination, and the latter presupposes the right to grant or deny the application on examination; but the statute does not provide for findings of fact and conclusions of law. The section contemplates a requirement of sufficient evidence to move the court's discretion, but does not contemplate an unlimited discretion with finality of decision that discharges or excuses a defendant from any further proceedings. State ex rel. Harrison v. District Court, 135 M 365, 340 P 2d 544.

Examination before Leave to File

Where a district judge assumed to act upon an application for leave to file an information, he should have directed an examination before himself as magistrate or some other magistrate. State ex rel. Harrison v. District Court, 135 M 365, 340 P 2d 544.

94-4916. (11630) Jurisdiction of justices of the peace.

Compiler's Note

The reference to section 94-1307 in this section should read section 94-603.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 662; State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

CHAPTER 53—SUPPRESSION OF RIOTS

94-5304. (11658) Magistrates and officers to command rioters to disperse.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable in damages for damage caused by mob violence. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

94-5305. (11659) To arrest rioters if they do not disperse.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable in damages for damage caused by mob violence. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

94-5314. Liability of officers for neglect of duties, etc.

Liability of Sheriff

There was no provision imposing liability for damages upon the sheriff prior to the enactment of this law. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

CHAPTER 55—REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACHMENT

94-5501. (11687) Officers subject to removal.

Operation and Effect

These sections do not restrain or limit the governor's power of removal of the third member on the unemployment compensation commission. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

Removal of Clerk of School District

A clerk of a school district board of trustees may be removed without notice and hearing since he is not a public officer. State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 486.

94-5516. (11702) Removal of public officers by summary proceedings.

Operation and Effect

Under this section of the Code it is the public policy of the state, in cases where a county officer is charged with collecting illegal fees, that such officer be entitled, as a matter of defense, to offer evidence of his good faith or honest mistake and the value received by the county. State v. Hale, 126 M 326, 249 P 2d 495, 496.

Time for Appearance of Party

In computing time for citing by court of party to appear the first day should be excluded and the last day included. State ex rel. Burns v. School Dist., 129 M 243, 284 P 2d 998, 1005, overruling State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, 455.

References

Cited or applied in State ex rel. Olsen v. Public Service Comm., 131 M 104, 308 P 2d 633, 639.

CHAPTER 56—LOCAL JURISDICTION OF PUBLIC OFFENSES

94-5601. (11703) Jurisdiction of offenses committed in this state.

Forgery

State court had jurisdiction of prosecution for forgery of check under section 94-2007 allegedly committed by enrolled member of Indian tribe, although check was obtained from Indian agency office, where check was cashed in a town outside of the boundaries of the Indian reservation. Petition of Fox, 141 M 189, 376 P 2d 726, 727.

Indian Wards

The state of Montana has jurisdiction over Indian wards for crimes committed by them within the state but without the bounds of "Indian country." Buckman v. State, 139 M 630, 366 P 2d 346; In re Diserly's Petition, 140 M 219, 370 P 2d 763.

Tribal Indians

Crimes committed by Indians within Montana, but without the bounds of "Indian Country" are within the jurisdiction of the state courts. Petition of Fox, 141 M 189, 376 P 2d 726, 727.

94-5602. (11704) Offenses commenced without, but consummated, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 412 (dissenting opinion).

94-5605. (11707) Offense committed partly in one county and partly, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 407 (dissenting opinion).

CHAPTER 57—TIME OF COMMENCING CRIMINAL ACTIONS

94-5703. (11724) Limitation of one year in misdemeanors.

References

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 59—WARRANT OF ARREST—PROCEEDINGS ON EXECUTION THEREOF

94-5904. (11736) To what peace officers warrants are to be directed.

Operation and Effect

The sheriff of Flathead County has authority to arrest person in Powell County under warrant issued in Flathead County upon such person's release from prison. Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

References

Cited or applied in State v MacLean, 129 M 500, 291 P 2d 250, 252.

94-5905. (11737) To what peace officers warrants are to be directed, etc.

References

Cited or applied in In re Malone, 130 M 622, 299 P 2d 455.

94-5912. (11744) No delay in taking defendant before magistrate.

Availability of Magistrate

In an action for false imprisonment brought by the plaintiff against a sheriff and surety on his official bond based on unnecessary delay in taking plaintiff before a magistrate, it was necessary for the plaintiff to prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. Rounds v. Bucher, 137 M 39, 349 P 2d 1026.

Unlawful Detention

Defendant convicted of the crime of uttering and delivering a fictitious check was not entitled to a reversal of his conviction because he was detained for a period of 21 days without being taken before a magistrate where there was no confession and the detention did not prejudice him in presenting his defense on the merits at the trial. State v. Johnston, 140 M 111, 367 P 2d 891, 892.

CHAPTER 60—ARRESTS—BY WHOM AND HOW MADE—CLOSE PURSUIT—RETAKING AFTER ESCAPE

Section 94-6029. Definition.
94-6030. Authority to establish roadblocks.
94-6031. Minimum requirements.
94-6032. Existing law preserved.
94-6033. Penalty.

94-6001. (11751) Arrest defined—by whom made.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 216.

94-6002. (11752) How an arrest is made and what restraint, etc.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 216.

94-6003. (11753) Arrests by peace officers.

Jurisdiction of Police Court

City police court had jurisdiction of defendant, arrested by a city police officer without a warrant, while driving on city streets, and promptly taken to the city police court where the arresting officer reported and charged defendant with operating a motor vehicle within the corporate limits of the city while under the influence of intoxicating liquor, in violation of city ordinance. City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 215.

Subsequent to Confession

Where defendant was requested to go to the sheriff's office for questioning and was not arrested until after his confession was given, the arrest without a warrant subsequent to the confession was a proper one within this section. State v. Nelson, 139 M 180, 362 P 2d 224, 229.

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager

handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified by alleging a violation of sections 94-35-169 and 94-4202. Harrer v. Montgomery Ward & Co, 124 M 295, 221 P 2d 428, 435.

References

Cited or applied in State v. Storm, 124 M 102, 220 P 2d 674, 677; State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-6005. (11755) Magistrate may order arrest.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-6006. (11756) Person making arrest may summon assistance.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 216.

94-6009. (11759) Warrant must be shown, when.

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

94-6016. (11766) Person arrested without a warrant to be taken before, etc.

Arrest Subsequent to Confession

Where defendant was requested to go to the sheriff's office for questioning and was not arrested until after his confession was given, the arrest without a warrant subsequent to the confession was proper under section 94-6003. State v. Nelson, 139 M 180, 362 P 2d 224, 229.

Jurisdiction of Police Court

City police court had jurisdiction of defendant, arrested by a city police officer without a warrant, while driving on city streets, and promptly taken to the city police court where the arresting officer reported and charged defendant with operating a motor vehicle within the corporate limits of the city while under the influence of intoxicating liquor, in violation of city ordinance. City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 215.

Purpose

The purpose of this statute is to insure that the person arrested is advised of the charge made against him in order to enable him to prepare a defense, and to protect him from being held incommunicado for protracted periods of time. State v. Nelson, 139 M 180, 362 P 2d 224, 229.

Unlawful Detention

Defendant convicted of the crime of uttering and delivering a fictitious check was not entitled to a reversal of his conviction because he was detained for a period of 21 days without being taken before a magistrate where there was no confession and the detention did not prejudice him in presenting his defense on the merits at the trial. State v. Johnston, 140 M 111, 367 P 2d 891, 892.

What Does Not Constitute Unnecessary Delay

Defendant's confession was not rendered inadmissible by reason of delay in taking him before a magistrate where he was requested at 8:55 p. m., Friday, November 7, 1958, to come voluntarily to jail for questioning; shortly after questioning by sheriff at about 10:00 p. m. he made an oral statement and at 11:50 p. m. wrote and signed a confession, witnessed by sheriff and one of his deputies; he was booked at 12:07 a. m., Saturday, November 8; at 10:40 a. m. on Saturday a statement was taken from defendant in the county attorney's office in the presence of the sheriff and deputy county attorney; and at 11:45 a. m., Saturday, November 8, defendant was brought before the magistrate in the courthouse. State v. Nelson, 139 M 180, 362 P 2d 224, 229, 230.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-6017. (11767) Arrest by telegraph.

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

94-6029. Definition. For the purpose of this act, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law-enforcement officers of this state, and their deputies, for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

History: En. Sec. 1, Ch. 60, L. 1959.

Title of Act

An act authorizing the establishment of temporary roadblocks on the highways of the state of Montana to identify drivers and apprehend law violators; by defining a temporary roadblock and the purpose for which it may be used; by providing minimum requirements in establishing temporary roadblocks and other matters properly relating thereto; by fixing penalty for violation of act; by repealing all acts or parts of acts in conflict herewith.

94-6030. Authority to establish roadblocks. The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

History: En. Sec. 2, Ch. 60, L. 1959.

94-6031. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

1. The temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than one hundred (100) yards, in either direction.

2. At the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than fifty (50) yards, in both directions, either in daytime or darkness.

3. At the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic, at a distance of not less than one hundred (100) yards.

4. At a distance of not less than two hundred (200) yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

History: En. Sec. 3, Ch. 60, L. 1959.

94-6032. Existing law preserved. Nothing in this act shall be deemed to limit, or encroach upon the existing authority of Montana law-enforcement officers in the performance of their duties involving traffic control.

History: En. Sec. 4, Ch. 60, L. 1959.

94-6033. Penalty. Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

History: En. Sec. 5, Ch. 60, L. 1959.

Repealing Clause

Section 6 of Ch. 60, Laws 1959 repealed all acts or parts of acts in conflict therewith.

CHAPTER 61—EXAMINATION AND COMMITMENT OR DISCHARGE OF DEFENDANT

94-6101. (11773) Magistrate to inform the defendant of the charge, etc.

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-6116. (11788) Order for bail on commitment.

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 440.

CHAPTER 62—PRELIMINARY PROVISIONS—FILING THE INFORMATION

94-6201. (11798) Offenses, how prosecuted.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6206. (11803) Duty of court when county attorney does not file, etc.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6207. (11804) Information may be amended.

Operation and Effect

Where court allowed state to amend information charging defendant with incest by changing "fornication" to "adultery" there was no substantial change in the charge and only touched a matter of form. Whether the defendant was married or unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. State v. Kuntz, 130 M 126, 295 P 2d 707, 710.

Prior Conviction Charged

Where the state on the day of trial filed an amended information changing the charge from robbery to robbery and a prior conviction of forgery, and the defendant was given no opportunity to either admit or deny the previous conviction, such amendment was substantive, increased the minimum penalty, and was reversible error. State v. Knight, 143 M 27, 387 P 2d 22.

Sufficiency of Information

The fact that an amendment was in fact made does not affect the sufficiency of the information, if the same was sufficient before the addition was made. State v. Davis, 141 M 197, 376 P 2d 727, 729.

Waiver of Objection

Where, after plea of not guilty, county attorney asked permission to amend information and counsel for defendant stated there was no objection, any objection to the amendment of the information to include a prior conviction was waived. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

94-6208. (11805) Indorsement on information.

Application

The reason for the statutory requirement that the names of witnesses be indorsed on the information is to safeguard defendant against surprise and unfair advantage. There was no unfair advantage

taken of defendant when the county attorney indorsed the name of a witness after impaneling a jury because he did not know of the existence of the witness at the time when the information was filed and gave notice to the defendant's attorney at that time and offered to agree to a reasonable delay in the trial in order that the defendant could examine the witness and secure evidence to meet his testimony. State v. Phillips, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 63—THE GRAND JURY—ITS FORMATION—POWERS AND DUTIES—FINDING AND PRESENTING AN INDICTMENT

94-6314. (11819) Retirement of the grand jury—discharge of.

"Final Adjournment" When Court Always Open

Although district court is always open and each term continues until succeeding term, the terms as fixed by the court limit the existence of the grand jury, the beginning of each term constituting a "final adjournment" of the preceding term within the meaning of this section. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

94-6324. (11829) When and from whom they may ask advice, etc.

Special Prosecutor—Appearance Before Grand Jury

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judges appointing such special prosecutor when the county attorney was present and able to act could not give such authority. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

References

Cited or applied in State v. Cockrell, 131 M 254, 309 P 2d 316, 320.

94-6331. (11836) Names of witnesses inserted at foot of indictment.

Appeal After Conviction

If person has gone to trial under indictment with witnesses names designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Failure to Endorse Names—Effect

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

If there were no witnesses it was the duty of the prosecution, on objection of defendant, to so state, either by a verified pleading or under oath. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Fictitious Names

If there were witnesses identified as John Doe and Richard Roe it is indefensible for the prosecution to conceal their identity from accused merely because the prosecutor believes that a disclosure of their true names is not vital or necessary to prepare a defense. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Operation and Effect

The statute requires the endorsement of names of all witnesses, not merely the names of witnesses the state believes to be important. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1041.

94-6332. (11837) Indictment, how presented and filed.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6333. (11838) Indictment to be signed by prosecuting attorney, etc.

References

Cited or applied in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1046.

94-6334. (11839) Warrant to issue.

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

CHAPTER 64—RULES OF PLEADING AND FORM OF INFORMATION AND INDICTMENT

Section 94-6407.1. Pleadings charging more than one offense—consolidation or separation for trial.

94-6401. (11841) Forms and rules of pleading.

Operation and Effect

No section of the Criminal Code can be found directing or requiring a bill of particulars to be furnished to a defendant; therefore, no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487.

References

Cited or applied in State v. McLeod, 131 M 478, 311 P 2d 400, 406.

94-6403. (11843) Indictment or information, what to contain.

Assault in First Degree

Contentions of defendant that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6404, 94-6405 and 94-6412. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

Attempting to Influence Juror

A consolidated information which charged the defendant with attempting to influence two named jurors in a named action was sufficient to satisfy subsection 2 of this section. State v. Bogue, 142 M 459, 384 P 2d 749.

Bill of Particulars

In a criminal case no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary in State v. Gondeiro, 82 M 530, 268 P 507; State v. Shannon, 95 M 280, 26 P 2d 360; State v. Stevens, 104 M 189, 65 P 2d 612; State v. Hahn, 105 M 189, 72 P 2d 459; State v. Robinson, 109 M 322, 96 P 2d 265, and any other such statements or holdings by this court.)

Common Understanding Rule

The test of the sufficiency of an information is: would a person of common understanding know what is intended to be charged? State v. Board, 135 M 139, 337 P 2d 924.

The test of the sufficiency of an information is whether the defendant is apprised of the charges brought against him and whether he will be surprised. State v. Bogue, 142 M 459, 384 P 2d 749, overruling State v. Hale, 129 M 449, 291 P 2d 229.

Lewd and Lascivious Act on Child

An information under section 94-4106 for committing a lewd and lascivious act on a child was sufficient although it did not allege the age of the defendant. State v. Davis, 141 M 197, 376 P 2d 727, 729.

References

Cited or applied in State v. Tursich, 127 M 504, 267 P 2d 641, 643; State v. Duncan, 130 M 562, 305 P 2d 761, 763; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Fairburn, 135 M 449, 340 P 2d 157, 161; State v. Randall, 137 M 534, 353 P 2d 1054, 1056; In re Davis' Petition, 141 M 565, 380 P 2d 880; State v. Boe, 143 M 141, 388 P 2d 372.

94-6404. (11844) Form of.

Sufficiency

Information which charged the defendant with manslaughter in the form established in this section and used the words "did then and there wilfully, wrongfully, unlawfully, knowingly and feloniously kill

one Duane Leslie Egge, a human being of the age of five years, contrary" was sufficient. State v. Duncan, 130 M 562, 305 P 2d 761, 763.

References

Cited or applied in State v. Bosch, 125 M 566, 242 P 2d 477, 487; State v. McLeod, 131 M 478, 311 P 2d 400, 406; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Fairburn, 135 M 449, 340 P 2d 157, 161; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6405. (11845) It must be direct and certain.

Assault in First Degree

Defendant's contentions that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6403, 94-6404 and 94-6412. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

Bill of Particulars Not Available

In a criminal case no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary made by the court.)

References

Cited or applied in State v. Duncan, 130 M 562, 305 P 2d 761, 763; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Randall, 137 M 534, 353 P 2d 1054, 1056; State v. Bogue, 142 M 459, 384 P 2d 749.

94-6407. (11847) Repealed.

Repeal

This section (Sec. 188, p. 218, Cod. Stat. 1871), prohibiting the charging of more than one offense in the same indictment or information, was repealed by Sec. 3, Ch. 172, Laws 1961.

94-6407.1. Pleadings charging more than one offense—consolidation or separation for trial. An indictment, information, complaint or accusation may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments, informations, complaints or accusations are filed in such cases in the same court, the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, complaint or accusation, but the defendant may be convicted of any number of the offenses charged, and each offense of which the defendant is convicted must be stated in the verdict or the finding of the court; provided, that the court in which the case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the indictment, information, complaint and accusation be tried separately or divided into two or more groups and each of said groups tried separately. An acquittal of one or more counts shall not be deemed an acquittal of any other count.

History: En. Sec. 1, Ch. 172, L. 1961.

Title of Act

An act to provide that an indictment, information, complaint or accusation may charge two or more offenses under separate counts; providing for the consolidation of two or more indictments, informations, complaints, or accusations; providing that election by prosecution is not required; providing that conviction may be had on any number of offenses charged; providing for a statement in verdict, and that the court may order trial of different offenses charged separately or in groups; providing for effect of acquittal on part of counts; amending section 94-6703, Revised Codes of Montana, 1947, relating to demurrers in criminal cases, by deleting subsection (3) thereof; and repealing section 94-6407, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

Former Jeopardy

Where the defendant was charged with twenty-two counts of statutory rape and convicted on nine of the counts, it was proper that each charge be set forth in a separate count in the information and there was no violation of state or federal constitutional guaranty against double jeopardy. State v. Boe, 143 M 141, 388 P 2d 372.

References

State v. Moran, 142 M 423, 384 P 2d 777.

94-6412. (11852) Indictment or information, when sufficient.

Assault in First Degree

Trial court committed no error in overruling defendant's demurrer to amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, where the amended information complied with the requirements of this section and sections 94-6401, 94-6403 to 94-6405. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

Manslaughter

Information for manslaughter in the form prescribed in section 94-6404, which complied with the requirements of sections 94-6403, 94-6405, and met the tests provided in this section, was sufficient. State v. Haley, 132 M 366, 318 P 2d 1084, 1085.

References

Cited in State v. Tursich, 127 M 504, 267 P 2d 641, 643; State v. Duncan, 130 M 562, 305 P 2d 761, 763; State v. Fairburn, 135 M 449, 340 P 2d 157, 161; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6413. (11853) Not insufficient for defect of form, etc.

References

Cited or applied in State v. Fairburn, 135 M 449, 340 P 2d 157, 161; State v. Davis, 141 M 197, 376 P 2d 727, 729; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6423. (11863) Distinction between accessory before the fact, etc.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show the defendant's guilt that he aided or abetted in the commission of the crime. State v. Maciel, 130 M 569, 305 P 2d 335, 336.

Instructions

Where a verbal declaration of one codefendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-204, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. State v. Keller, 126 M 142, 246 P 2d 817, 821.

Operation and Effect

Under this section and section 94-204, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. State v. Simon, 126 M 218, 247 P 2d 481, 485.

94-6428. (11868) Of what offense a defendant may be convicted.

Verdict for Lesser Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

94-6429. (11869) Allegation as to partnership property.

References

Cited or applied in State v. Fairburn, 135 M 449, 340 P 2d 157, 161; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6434. (11874) When not material.

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

CHAPTER 65—ARRAIGNMENT OF DEFENDANT

Section 94-6513. Compensation of attorney for accused.

94-6501. (11875) Defendant must be arraigned in the court, etc.

Admissibility of confession as affected by delay in arraignment of prisoner. 19 ALR 2d 1331.

94-6512. (11886) Right to counsel on arraignment.

Appointment of Counsel

Defendant convicted of forgery on plea of guilty was not entitled to a writ of habeas corpus on the ground that he was not advised by the district court of his legal rights, nor was counsel appointed for him as required by this section, where there was no showing of prejudice such as would overcome the presumption that the district court performed its judicial duty; and a period of more than two years and ten months had elapsed since the arraignment but his petition for the writ was the first time such contention had been made before the supreme court. In re Diserly's Petition, 140 M 219, 370 P 2d 763, 764.

Court Appointed Counsel

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is the duty of the court to make the appointment effective by giving a reasonable time for the preparation of the case. State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

Perfection of Appeal

Where district court appointed counsel for the defendant and ordered preparation of the record for an appeal to the supreme court, all at public expense, defendant having had no voice in the choice, in the interest of justice it was incumbent upon the supreme court to consider the contended errors although court-appointed counsel failed to timely file the notice of appeal. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

Right to Appoint Counsel

There is no provision in the law for appointment of counsel in the supreme court, such appointments are made by the district courts. In re Pelke's Petition, 139 M 354, 365 P 2d 932, 935; Brown v. State, 140 M 289, 371 P 2d 262, 263.

Waiver of Right to Counsel

The right to counsel may be intelligently waived by an accused, and the determination of whether the waiver was intelligently made will depend upon the particular facts and circumstances surrounding each case, including the background, experience, and conduct of the accused. Petition of Jones, 143 M 19, 386 P 2d 747.

The right to counsel as provided by this section may be knowledgeably waived by a defendant competent to do so and who has been fully informed of his right by the court. Nelson v. State, — M —, 397 P 2d 700.

94-6513. (11887) Compensation of attorney for accused.

Whenever, in a criminal action or proceeding in the district court, an attorney-at-law defends a person charged with any offense, by order of the court, on the ground that the accused is unable to procure or employ counsel, the county in which such criminal action or proceeding may have arisen is liable to pay such attorney for his services such sum as the judge certifies to be a reasonable compensation therefor.

History: En. Sec. 1, p. 12, L. 1881; re-en. Sec. 197, 3d Div. Comp. Stat. 1887; amd. Sec. 1892, Pen. C. 1895; amd. Sec. 1, Ch. 33, L. 1903; re-en. Sec. 9189, Rev. C. 1907; re-en. Sec. 11887, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1949.

Amendment

The 1949 amendment omitted a portion of this section which placed specific limitations on the amount allowed as follows, capital cases not to exceed $100, other felonies not to exceed $50, and in other cases not to exceed $25.

Repealing Clause

Section 2 of Ch. 38, Laws 1949 repealed all acts or parts of acts in conflict therewith.

References

Cited or applied in State ex rel. Irvine v. District Court, 125 M 398, 239 P 2d 272, 281; State v. Frodsham, 139 M 222, 362 P 2d 413, 416; In re Pelke's Petition, 139 M 354, 365 P 2d 932, 935; Brown v. State, 140 M 289, 371 P 2d 262, 263.

CHAPTER 66—SETTING ASIDE THE INDICTMENT OR INFORMATION

94-6601. (11891) Indictment, when set aside on motion.

Failure To Endorse Names on Indictment

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Indictment must be set aside where witnesses names on indictment were Richard Roe and John Doe and witnesses real names were not supplied to defendant and if there were no witnesses that fact should be shown by the prosecution either by a verified pleading or under oath. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043. (In this case it was said that if other grounds had not required setting aside of indictment, court would have been disposed to return case to trial court to permit defendant to interrogate prosecutor and grand jury foreman as to whether there were witnesses whose names were not endorsed on indictment.)

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Grounds Exclusive

The grounds for setting aside an indictment of a grand jury as set forth in this section are exclusive. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1037.

Presence of Unauthorized Person

Where there has been a violation of subd. 3 of this section the accused need not show prejudice, but the very appearance of an unauthorized person before the grand jury is sufficient to set aside the indictments. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

Presence of Unauthorized Person—Special Prosecutor Before Grand Jury

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

Presence While Indictment under Consideration

A case is "under consideration" before the grand jury within the meaning of subsection 3 of this section when witnesses are being examined. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1044, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279; State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6602. (11892) Defendant waives objections, etc.

Amendment of Information

There was no error in permitting information to be amended to allege prior conviction when there was no objection by defendant and defendant's attorney consented to its filing. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

References

Cited or applied in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1038.

94-6603. (11893) Motion, when heard—if denied or granted, etc.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

94-6604. (11894) **Effect of order of resubmission.**

Cross-Reference

See note to sec. 94-6605. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

94-6605. (11895) **Order no bar to another prosecution.**

Operation and Effect

Where district court was ordered to set aside indictment on ground set forth in subd. 3 of section 94-6601, prosecution for the offenses charged was not barred but the cases were ordered resubmitted to the county attorney in accordance with section 94-6604 for the filing of such information as he believes necessary. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

CHAPTER 67—DEMURRER

Section 94-6703. Grounds of demurrer.

94-6701. (11896) **Pleading on part of defendant.**

Operation and Effect

This section is exclusive and there is no section of the Criminal Code directing or requiring a bill of particulars to be furnished to a defendant charged with a criminal offense. State v. Bosch, 125 M 566, 242 P 2d 477, 487.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859; State v. Duncan, 130 M 562, 305 P 2d 761, 762.

94-6702. (11897) **Demurrer on plea, when put in.**

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. State v. Hale, 129 M 449, 291 P 2d 229, 230, overruled on another point in 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

References

Cited or applied in State v. Duncan, 130 M 562, 305 P 2d 761, 762.

94-6703. (11898) **Grounds of demurrer.** The defendant may demur to the indictment or information, when it appears upon the face thereof, either—

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirement of sections 94-6403, 94-6404 and 94-6405;

3. That the facts stated do not constitute a public offense;

4. That it contains any matter, which if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

History: En. Sec. 211, p. 222, Cod. Stat. 1871; re-en. Sec. 211, 3d Div. Rev. Stat. 1879; amd. Sec. 1, p. 73, L. 1885; re-en. Sec. 212, 3d Div. Comp. Stat. 1887; amd. Sec. 1922, Pen. C. 1895; re-en. Sec. 9200, Rev. C. 1907; re-en. Sec. 11898, R. C. M. 1921; amd. Sec. 2, Ch. 172, L. 1961. Cal. Pen. C. Sec. 1004.

Amendment

The 1961 amendment deleted a subd. 3, which read, "3. That more than one offense is charged;" and renumbered the succeeding subdivisions.

Repealing Clause

Section 3 of Ch. 172, Laws 1961 read "Section 94-6407, Revised Codes of Montana, 1947, is hereby repealed and all acts and parts of acts in conflict herewith are hereby repealed."

Facts Stated Do Not Constitute a Public Offense

Information charging a violation of section 94-1805 (obtaining money under false pretenses) which only avers that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. State v. Hale, 129 M 449, 291 P 2d 229, 232, distinguished in 135 M 449, 453, 340 P 2d 157, 160, overruled on another point in 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

DECISIONS UNDER FORMER LAW

Sufficiency of Information

An information which charges defendant with an infamous act against nature and then in describing the manner in which the crime was committed it alleged an assault, it is not open to the charge that it is duplicitous. Allegations with respect to the assault are merely descriptive of the means of accomplishing the infamous crime against nature which never could be perpetrated against an unwilling participant without an assault. State v. McSloy, 127 M 265, 261 P 2d 663, 664.

References

Cited or applied in State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6711. (11906) Objections, forming ground of demurrer, when taken.

References

Cited or applied in State v. Hale, 129 M 449, 291 P 2d 229, 233; State v. MacLean, 129 M 500, 291 P 2d 250, 251.

CHAPTER 68—PLEAS

94-6801. (11907) The different kinds of pleas.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861; State v. Porter, 130 M 299, 300 P 2d 952, 954.

94-6802. (11908) Plea, how put in and its form.

Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written special plea in bar and ordering the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-100-4. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 861.

94-6803. (11909) Plea of guilty, how put in and when withdrawn.

Denial of Motion to Withdraw

Denial of motion to withdraw plea of guilty will not be reversed where chief contention was that he was misled by the erroneous advice of counsel as to his guilt under the law, when from the record of the trial court there was evidence which would have justified a finding of guilty, regardless of the correctness of the counsel's interpretation of the law. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Discretion of Court

The granting or refusal of permission to withdraw a plea of guilty and substitute a plea of not guilty rests in the discretion of the trial court and is subject to review only where an abuse of discretion is shown. State v. Nance, 120 M 152, 184 P 2d 554, 560, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Guilty Plea Under Agreement with Prosecutor

While the supreme court will not encourage the making of bargains with persons charged of crime, where a defendant has changed his plea of not guilty to a plea of guilty on an agreement with the prosecuting attorney as to recommendation for sentences which were carried out, the supreme court, will not, after he obtained the benefits of the agreement, aid him in escaping its obligations, by ordering a

withdrawal of the guilty plea. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Motion to Withdraw—Time for Filing

In order to receive favorable consideration an application to withdraw a plea of guilty should be made within a reasonable time. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Waiver of Jury Trial

The entering of a plea of guilty by a defendant waives his right to a jury trial. State v. Peters, 140 M 162, 369 P 2d 418, 419.

When Plea of Guilty may be Withdrawn after Judgment

Where the evidence discloses that there was a grave doubt that the defendant had the mental capacity to appreciate and understand what he was doing and the consequences thereof, when without benefit of counsel, he pleaded guilty to the charge of murder, defendant should have been allowed to withdraw his plea of guilty and enter a plea of not guilty. State v. Dryman, 125 M 500, 241 P 2d 821, distinguished in 131 M 152, 156, 308 P 2d 969, 971.

Withdrawal of Plea of Guilty after Judgment

Held, on the facts of the particular case, that where the defendant at the time of entering his plea of guilty thought that he had an understanding as to what his sentence would be; that no direct commitment was made to him by any of the officers but the officers had made statements to others who were in contact with the defendant and upon whose advice he relied, the ends of justice would be best served by permitting the defendant to change his plea. State v. Morgan, 131 M 58, 307 P 2d 244, distinguished in 134 M 301, 304, 330 P 2d 968, 970.

District court did not abuse its discretion in entering order denying defendant's motion to withdraw plea of guilty and substitute plea of not guilty where the record disclosed that defendant entered his plea of "guilty" on December 30, 1960; sentence was pronounced on January 23, 1961; and the motion was not filed in the district court until July 24, 1961, being six months after imposition of the sentence and six months and twenty-four days after entry of the plea. State v. Peters, 140 M 162, 369 P 2d 418, 419.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859; Petition of Amor, 143 M 315, 388 P 2d 270.

94-6805. (11911) What may be given in evidence under plea of not guilty.

Operation and Effect

The bar to a prosecution for misdemeanor where defendant is not brought to trial within six months after the filing of the information as provided for in section 94-9507 may properly be raised by a plea of not guilty. State v. Porter, 130 M 299, 300 P 2d 952, 954.

CHAPTER 69—CHANGE OF PLACE OF TRIAL OR JUDGE

Section 94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside.

94-6901. (11916) What petition to contain.

Application

Trial court was in error for refusing to grant a change of venue where evidence disclosed that local newspapers had fanned the feeling of the community against the defendant and that county officials themselves felt that feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Change of Place of Trial

Where Supreme Court ordered a new trial and that it be had in some county not adjacent to Toole county because of the prejudice of the people in Toole county, trial court erred in directing that the new trial take place in Teton county. Although Teton county is not adjoining Toole county but is separated by some twenty miles, yet the word adjacent has no arbitrary meaning or definition; the term is a relative and not an absolute one, and the exact meaning of which, in any particular case, is determinable principally by the context in which it is used. State ex rel. Dryman v. District Court, 128 M 402, 276 P 2d 969, 970.

An application for a change of place of trial is addressed to the sound discretion

of the trial court and a clear abuse of discretion must be shown, or the ruling of the trial court will not be disturbed. State v. Bischert, 131 M 152, 308 P 2d 969, 971; In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

In support of an application for change of place of trial a denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. State v. London, 131 M 410, 310 P 2d 571, 580.

Defendant in a criminal proceeding was not entitled to a change of venue where files did not contain any application for a change of place of trial as required by this section. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Opinion of Defendant

Where the affidavits of defendant's motion for a change of venue stated that "in the opinion" of the defendant he would not receive a fair trial in the county of the alleged crime and set forth reasons for that opinion but failed to show compelling evidence in support of the motion, it was not an abuse of discretion for the trial court to deny the motion. State v. Barick, 143 M 273, 389 P 2d 170.

Prejudice of Judge

Action of a judge in refusing to set bond pending appeal from a manslaughter conviction is not an act which prejudices a defendant during a trial. State v. Bischert, 131 M 152, 308 P 2d 969, 971.

94-6906. (11921) When change of place of trial not granted.

References

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 999.

94-6909. (11924) Trial.

References

State v. Moran, 142 M 423, 384 P 2d 777.

94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside. A district judge must not sit or act as such in any criminal action or proceeding when either party makes and files an affidavit, as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge. Such affidavit may be made by any party to the criminal action, motion or proceeding, personally, or by his attorney or guardian and shall be filed with the clerk of the district court in which the same may be pending, at least fifteen days prior to the trial of said cause, or any retrial thereof after appeal. Upon the filing of the affidavit, the judge, as to whom said disqualification is averred, shall be without authority to act further in the criminal action, motion or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such criminal action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. Not more than one judge can be disqualified in said criminal action or proceeding, at the instance of the prosecution and not more than one judge at the instance of the defendant or defendants.

If there be more than one judge in any judicial district in which said affidavit is made and filed, another judge residing in the judicial district wherein the affidavit is made and filed must be called in to preside in such criminal action, motion or proceeding; if there be but one judge in the

judicial district, then a district judge of another judicial district must be called in to preside in such criminal action, motion or proceeding; when another judge has assumed jurisdiction of a criminal action, motion or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in.

If either party in any matter above mentioned shall file the affidavit as herein provided such party may not complain of any reasonable delay as the result thereof.

The provisions of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

History: En. Sec. 1, Ch. 61, L. 1959; amd. Sec. 1, Ch. 112, L. 1965.

Title of Act

An act to provide for the disqualification of district judges in criminal actions or proceedings; prescribing the grounds and procedure for disqualification; providing for assumption of jurisdiction by other district judges in event of disqualification; and repealing all other acts and parts of acts in conflict herewith.

Amendment

The 1965 amendment deleted "by reason of the bias and prejudice of such judge" at the end of the first sentence and "for bias and prejudice" following "disqualified" in the last sentence of the first paragraph.

Repealing Clauses

Section 2 of Ch. 61, Laws 1959 and Sec. 2 of Ch. 112, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 112, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

Right to Disqualify Judge

In a criminal proceeding, this section is the proper statute under which a defendant may disqualify a judge. Section 93-901, which applies only to civil cases, is inapplicable. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

The right to disqualify a judge in a criminal proceeding is purely statutory. It has no constitutional nor common-law basis. Therefore, the conditions precedent in this section must be followed. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Where defendant filed no affidavit for disqualification of judge in criminal proceeding he waived the provisions of this section. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Timely Motion

This section requires affidavit of disqualification to be made fifteen days before trial on the merits, and a motion by the state to disqualify made after the trial and pending a motion for new trial was not timely. State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

CHAPTER 70—MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OF ISSUES—POSTPONEMENT OF TRIAL

94-7001. (11928) Issue of fact defined.

References

Cited or applied in State v. Duncan, 130 M 562, 305 P 2d 761, 762.

94-7002. (11929) How tried.

Directed Verdict in Criminal Case

In a prosecution for unlawfully driving a truck with an overload which is a misdemeanor, it was error for the court to instruct and direct the jury to return a verdict of guilty where the evidence as to the true weight of the truck was in conflict as shown by two different state police scales. State v. Baillargeron, 126 M 310, 249 P 2d 799, 801.

References

Cited or applied in State v. Winter, 129 M 207, 285 P 2d 149, 159.

94-7004. (11931) When presence of defendant is necessary on the trial.

Absence of accused at return of verdict in felony case. 23 ALR 2d 456.

Impaneling or selection of jury in accused's absence. 26 ALR 2d 762.

94-7005. (11932) Formation of trial jury.

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case. 1 ALR 2d 1291.

Indoctrination by court of persons summoned for jury service as infringing constitutional right of trial by jury. 2 ALR 2d 1104.

Exclusion of women from grand or trial jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction. 9 ALR 2d 661.

94-7008. (11935) Defendant entitled to two days to prepare for trial.

Continuance

Trial judge did not abuse discretion in denying defendant's application for continuance over the term where trial was set for May 7, 1956, after defendant entered plea of guilty on April 24, 1956. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7009. (11936) Notice and affidavits for postponement.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7010. (11937) Postponement for cause.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7012. (11939) Effect of failure to apply.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7013. (11940) Case set for trial.

References

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 71—CHALLENGING THE JURY

94-7101. (11941) Definition and division of challenges.

Operation and Effect

Sections 94-7101 to 94-7128 provide the procedure for interposing a challenge to the panel or to an individual juror. State v. Deeds, 130 M 503, 305 P 2d 321, 323.

94-7105. (11945) Upon what founded.

Burden of Proof

Where two jurors did not appear and were not excused when the jury was impaneled but the defendant could not show affirmatively that the panel had not been served, there was no prejudicial error. State v. Moran, 142 M 423, 384 P 2d 777.

Right of Defendant

Failure of a properly notified juror to be present when the jury was impaneled did not invalidate the trial as the defendant had the right only to reject jurors and not to select any particular juror. State v. Moran, 142 M 423, 384 P 2d 777.

References

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

94-7107. (11947) Exception, if sufficiency of the challenge be denied.

Operation and Effect

Where defendant filed a verified, specific and detailed challenge to a jury panel and the county attorney did not deny the sufficiency of the facts alleged and the defendant also filed a timely motion for the issuance of a subpoena to the jury commissioners to appear, the trial court could not presume the jury commissioners had performed their duty in selecting the panel; hence, it was error for the trial court to overrule defendant's motion based on the presumption that the jury commissioners had performed in accordance with the law. State v. Deeds, 130 M 503, 305 P 2d 321, 324.

Trial of Facts Required

If a challenge to the panel alleges facts which, if true, would show a material variation from the statutory procedure in making up the jury list, the court could not, on the basis of a presumption that the jury commissioners had done their duty, summarily deny the challenge, particularly in the absence of an exception by the adverse party. State v. Chapman, 139 M 98, 360 P 2d 703.

94-7108. (11948) If exception overruled, court may allow denial, etc.

References

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324; State v. Chapman, 139 M 98, 360 P 2d 703.

94-7109. (11949) Denial of challenge, how made, and trial thereof.

Trial of Facts Required

If a challenge to the panel alleges facts which, if true, would show a material variation from the statutory procedure in making up the jury list, the court must try the facts and may not summarily deny the challenge on the basis of a presumption that the jury commissioners have done their duty. State v. Chapman, 139 M 98, 360 P 2d 703.

References

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

94-7115. (11955) Number of peremptory challenges.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7116. (11956) Challenges of state.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7119. (11959) Particular causes of challenge.

Bias of Juror

Where a juror on his voir dire in a burglary case stated that he had formed an opinion based on what he had heard on the radio, television, and read in the newspapers, but had not discussed the case with anyone purporting to know any of the facts about it and declared under oath that he could lay aside his opinion and judge the case solely on the evidence presented, it was not error to deny defendant's challenge. State v. Moran, 142 M 423, 384 P 2d 777.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7120. (11960) Ground of challenge for implied bias.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7122. (11962) Causes of challenge, how stated.

Challenges for Cause

Where the state challenged three jurors for cause, and the evidence showed that one of the jurors was nearly deaf, and the

other two had formed opinions, the court was correct in excusing the jurors for cause. This section is not a limitation upon the power of the court in granting challenges which are warranted. State v. Gates, 131 M 78, 307 P 2d 248.

Knowledge of Facts

Where a juror on his voir dire in a burglary case stated that he had formed an opinion based on what he had heard on the radio, television, and read in the newspapers, but had not discussed the case with anyone purporting to know any of the facts about it and declared under oath that he could lay aside his opinion and judge the case solely on the evidence presented, it was not error to deny defendant's challenge. State v. Moran, 142 M 423, 384 P 2d 777.

Purpose

The purpose of this section was to require the ground of challenge to be stated before the challenger is in a position to predicate error on the court's refusal to sustain a challenge. It was not intended as a limitation upon the power of the court in granting challenges which the facts warrant. State v. Gates, 131 M 78, 307 P 2d 248, 249.

94-7127. (11967) Decision of court to be entered.

Overruling Challenge

Where court relied on answers to last two questions and on the assumption that there was a misunderstanding as to the earlier questions in examining a prospective juror for prejudice, the overruling of the challenge would not be disturbed especially where the defendant had three peremptory challenges left at the time and exercised one to discharge such juror, and fact that defendant regarded other jurors as undesirable on which he might have exercised his challenge gave him no right to have such juror excused for bias where there was no showing that such jurors were disqualified. State v. Allison, 122 M 120, 199 P 2d 279, 286.

CHAPTER 72—THE TRIAL

94-7201. (11969) Order of trial.

Instructions

Duty of Court to Instruct

In a rape trial where there was no inconsistency, contradictory evidence, or proof of falsity shown in the prosecutrix's testimony, and no showing of malice or desire for revenge against the accused, it was not error for the court to refuse to give a cautionary instruction. State v. Lagge, 143 M 289, 388 P 2d 792.

Objections

Objection to instruction that it "is not a correct statement of the law; it is not applicable to the facts in this case" does not comply with this section. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Objection to instruction that "it is repetitious and not a correct statement of the law" does not comply with this section. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Any error in giving instructions is not available to appellants on appeal where the record shows no objections made by the appellants. State v. Holt, 121 M 459, 194 P 2d 651, 654.

Where instructions as finally proposed to be given were not objected to by counsel for defendant, the district court by statute was expressly forbidden to grant a new trial and the Supreme Court is forbidden to reverse the cause, even if error existed in such instructions. State v. Donges, 126 M 341, 251 P 2d 254, 255; State v. Bubnash, 142 M 377, 382 P 2d 830.

Opening Statement

It was not a denial of fair trial where the jury was allowed to consider the proven and admitted fact that the defendant in a first degree assault case had been convicted of three prior felonies, where only one would have served to increase the punishment, when they were instructed that the prior convictions were to be considered only in fixing the punishment if and when the defendant was found guilty of the assault charge. Petition of Jones, — M —, 393 P 2d 780.

Subd. 1

Failure to Read Information

It is not error to fail to read the information, there being no statutory requirement for such procedure. State v. Gall, 135 M 131, 337 P 2d 932.

Subd. 4

Bill of Exceptions

Where attorney for defendant presented bill of exceptions and prayed that the same be signed, settled and allowed, he could not be heard to complain on appeal

that his bill of exceptions was not accurate. State v. Pankow, 134 M 519, 333 P 2d 1017, 1020.

References

Cited or applied in State v. Maciel, 130 M 569, 305 P 2d 335, 337.

94-7203. (11971) Defendant presumed innocent—reasonable doubt.

Burden of Proof

In criminal cases the burden of proof never shifts, but the burden of the evidence may shift frequently. State v. Moorman, 133 M 148, 321 P 2d 236, 238.

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. State v. Greeno, 135 M 580, 342 P 2d 1052.

Operation and Effect

In a prosecution for the crime of carrying a concealed weapon; wherein the defendant was found guilty by a jury, it was held on appeal that in view of the uncertainty in the mind of the state's only eyewitness as compared with witnesses for the defendant, coupled with the effect of this section, the evidence was not sufficient to justify a conviction for the crime charged. State v. Gilbert, 125 M 104, 232 P 2d 338, 341.

94-7209. (11977) Rules of evidence in civil actions, etc.

Adverse Witness Statute

In a criminal case the state of Montana is the opposite party to the defendant, and former section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. State v. Moorman, 133 M 148, 321 P 2d 236, 238.

Inspection of Writings

Even if section 93-8301 [now superseded by M. R. Civ. P., Rule 34] is made applicable to criminal cases by this section, defendant was not entitled to the inspection of written materials, where there was no showing as to what the material consisted of, whether it was relevant to the defense, or that it was admissible in evidence. State ex rel. Keast v. District Court, 135 M 545, 342 P 2d 1071.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 976 (dissenting opinion); State v. Piveral, 127 M 427, 265 P 2d 969, 970 (dissenting opinion); State v. Reid, 127 M 552, 267 P 2d 986, 990.

94-7220. (11988) Conviction on testimony of accomplice.

Cross-Reference

Child under sixteen not an accomplice to commission of infamous crime against nature, sec. 94-4120.

Corroboration

The evidence which corroborates the testimony of an accomplice could be furnished by the defendant. It could be circumstantial. It need not extend to every fact to which the accomplice testified and need not be sufficient to justify a conviction or establish a prima facie case of guilt: it being sufficient if it tends to connect defendants with the commission of the crime. Whether it tends to do so is a question of law, while its weight—its efficacy to fortify the testimony of the accomplice and render his story trustworthy—is a matter for the consideration of the jury. State v. Donges, 126 M 341, 251 P 2d 254, 257.

In a legal sense corroboration is something which leads an impartial and reasonable mind to believe that material testimony is true; it may also consist of admissions, declarations or conduct of the defendant, writings, or other documentary evidence which tends to show concert of action between the accomplice and the defendant. State v. Harmon, 135 M 227, 340 P 2d 128; State v. Moran, 142 M 423, 384 P 2d 777.

Instructions

Where the defense requested instructions as to the effect of accomplice's testimony and there was evidence in the record from which the jury might have concluded that a deputy sheriff was an accomplice of the defendant, the court should have instructed the jury that if they believed the deputy sheriff was an accomplice then they must weigh his evidence as provided by section 93-2001-1, subd. 4 and also that such evidence must be corroborated as required by this section. State v. Porter, 125 M 503, 242 P 2d 984, 990.

Insufficient Corroboration

In a prosecution for an infamous crime against nature, where the only evidence other than the testimony of the accomplice showed that the accomplice had stayed at the defendant's house over night and slept with the defendant, the corroborating evidence was not sufficient to sustain a con-

viction as it does nothing more than to show opportunity on the part of defendant to have committed the crime. State v. Gangner, 130 M 533, 305 P 2d 338.

Operation and Effect

In a sodomy case, court should have given the requested instructions of the defendant to the effect that if the jury finds the prosecuting witness was an accomplice, then the jury must acquit the defendant, where the only evidence connecting the defendant with the commission of the crime was the testimony of the prosecuting witness. State v. Searle, 125 M 467, 239 P 2d 995, 998.

Person Making Forged Instrument Not Accomplice of Person Passing Forged Instrument

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument. The person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

Sufficiency of Corroborative Evidence

Corroborating evidence need not be direct, but may be circumstantial; it need not be sufficient to justify a conviction, or to establish a prima facie case of guilt; it need not be sufficient to connect the defendant with the commission of the crime, but it is sufficient if it tends to do so. State v. Harmon, 135 M 227, 340 P 2d 128.

Evidence was sufficient to corroborate the testimony given by alleged accomplice where the record disclosed facts and circumstances which tended to connect the defendant with the commission of burglary in the first degree. State v. Laverdure, 140 M 236, 370 P 2d 489, 491; State v. Barick, 143 M 273, 389 P 2d 170.

Weight Given Corroborative Evidence

If the trial judge is satisfied that the evidence is corroborative, it is his duty to submit the case to the jury to determine what effect should be given to the corroboration and whether it is sufficient to warrant a conviction. State v. Harmon, 135 M 227, 340 P 2d 128.

94-7227. (11995) When evidence on either side is closed, etc.

Directing Jury to Acquit Defendant

Where there is an utter failure or lack of evidence to establish the states case court may direct the jury to return a verdict for the defendant. State v. Widdicombe, 130 M 325, 301 P 2d 1116, 1118.

Operation and Effect

This section is applicable only in cases in which the trial court deems the evidence, although tending to prove every element constituting the crime charged, insufficient in weight to warrant a conviction. State v. Peschon, 131 M 330, 310 P 2d 591, 595.

References

Cited or applied in State v. Perez, 126 M 15, 243 P 2d 309, 311; State v. Allen, 128 M 306, 275 P 2d 200, 205.

94-7228. (11996) View of place of offense or property.

Condition of Premises

The fact that the premises to be viewed had accumulated dirt which had been hastily swept away, that doors had been replaced and the view was bleak and morbid furnished no ground for interfering with an order permitting a view of the premises. State v. Allison, 122 M 120, 199 P 2d 279, 292.

Discretion of Court

The matter of permitting the jury to view the premises rests entirely in the discretion of the trial court which will not be interfered with except in case of manifest abuse. State v. Allison, 122 M 120, 199 P 2d 279, 292.

94-7230. (11998) Jurors, separation of, during trial.

Separation of jury in criminal case. 21 ALR 2d 1088.

94-7236. (12004) In all other cases court to decide questions of law.

References

Cited or applied in State v. Strobel, 130 M 442, 304 P 2d 606, 613; State v. Barick, 143 M 273, 389 P 2d 170.

94-7239. (12007) **If county attorney fails to attend, court may appoint.**

References

Cited or applied in State v. Cockrell, 131 M 254, 309 P 2d 316, 319.

CHAPTER 74—THE VERDICT

94-7407. (12023) **Jury may find upon charge of previous conviction.**

Amended Information

Where the state on the day of trial filed an amended information changing the charge from robbery, to robbery and a prior conviction of forgery, and the defendant was given no opportunity to either admit or deny the previous conviction, such amendment was substantive, increased the minimum penalty, and was reversible error. State v. Knight, 143 M 27, 387 P 2d 22.

Plea of Guilty

This statute contemplated that the answer to charge or allegation of prior conviction should be an admission or denial, but a plea of guilty is an admission of the charge. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248, 249.

Plea of Not Guilty

Contention of petitioner for writ of habeas corpus that his confinement was illegal because information was amended before trial to charge a previous conviction of a felony and that while he entered a plea of not guilty to such charge of previous conviction the jury made no reference to it in their verdict, as provided by this section, was completely false, where the verdict of the jury stated that the jury found defendant guilty of the crime of felony, to wit: lewd and lascivious act upon a child, as alleged in the information, and found the charge of previous conviction of felony, to wit: lewd and lascivious acts upon a child as alleged in the information true and left the fixing of his punishment to the court. In re Davis' Petition, 139 M 622, 365 P 2d 948, 949.

References

Petition of Jones, — M —, 393 P 2d 780.

94-7411. (12027) **Jury may assess punishment.**

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

94-7412. (12028) **Court may assess punishment.**

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

94-7415. (12031) **Court may reduce verdict.**

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

CHAPTER 75—BILLS OF EXCEPTION

94-7504. (12040) **Exceptions, how settled by supreme court.**

References

Cited or applied in State ex rel. Toner v. District Court, 127 M 603, 256 P 2d 1095.

94-7507. (12044) **Settlement of bills of exceptions.**

Operation and Effect

Since the responsibility for the preparation of the bill of exceptions lies with the appellant, he cannot be heard to complain on appeal that his own bill of exceptions is not accurate. State v. Pankow, 134 M 519, 333 P 2d 1017, 1020.

Provisions Mandatory

Compliance with this section is mandatory. State v. Kuntz, 130 M 126, 295 P 2d 707, 708.

Where the time for presenting the bill of exceptions to the judge has expired the judge has lost jurisdiction after that to settle any bill of exceptions for the defendant. Such jurisdiction, once lost, could not be reinvested in the trial judge even by the stipulation of counsel. State v. Kuntz, 130 M 126, 295 P 2d 707, 708.

Waiver of Notice

Where the county attorney made no objection to the want of notice in the district court and actually stipulated that he had no amendments to offer and that the bill of exceptions as proposed was correct, then this constituted a waiver of formal notice. State v. Nelson, 130 M 466, 304 P 2d 1110, 1112.

94-7508. (12045) Record on appeal in criminal cases.

Dismissal of Appeal

The state's motion to dismiss an appeal will be granted where the defendant, although filing a notice of appeal, did not have settled or allowed a bill of exceptions, and omitted to file a transcript or briefs in the Supreme Court when no extension of time has been granted and no showing that the appellant's failure and omission has been without laches on his part. State v. McDonald, 125 M 201, 232 P 2d 997.

CHAPTER 76—NEW TRIALS

94-7602. (12047) Its effect.

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. State v. Hale, 129 M 449, 291 P 2d 229, 230, overruled on another point in 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

References

Cited in State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318.

94-7603. (12048) Grounds for granting new trial.

Subd. 4

Operation and Effect

In a prosecution for statutory rape, there was no error where the jury reached a verdict of guilty, and then, in deciding on punishment, each member set down his proposed amount in years, the total was divided by twelve to get an average, and then the term of the punishment was fixed after further discussion. State v. Moorman, 133 M 148, 321 P 2d 236, 242.

A quotient verdict is not a lot verdict. State v. Moorman, 133 M 148, 321 P 2d 236, 243.

Subd. 7

Contradictory Statements by Witness

Where the key witness at the trial in which defendant was convicted of larceny made statements after the trial demonstrating that the testimony he gave was false and perjurious and, at the hearing on defendant's motion for new trial, the witness refused to give any testimony, the requirements for the granting of a new trial on the ground of newly discovered evidence were met and the defendant should have been granted a new trial. State v. Greeno, 135 M 580, 342 P 2d 1052.

Motion for New Trial after Appeal Perfected

Once an appeal has been perfected to the Supreme Court the district court loses jurisdiction of the case, except that if a motion for a new trial is then pending the district court retains jurisdiction thereof, with power to rule thereon. State v. Nicks, 131 M 567, 312 P 2d 519, 520.

Where defendant had perfected an appeal to the Supreme Court, and then discovered new evidence, the Supreme Court had no jurisdiction to grant a new trial, but upon defendant's prima facie showing of matters sufficient to warrant consideration, the court would instruct the district court to entertain defendant's motion for a new trial, and would stay further proceedings pending such motion. State v. Nicks, 131 M 567, 312 P 2d 519, 521.

References

Cited or applied in State v. Winter, 129 M 207, 285 P 2d 149, 159; State v. Moorman, 133 M 148, 321 P 2d 236, 243; Petition of Davis, 139 M 619, 361 P 2d 963; Petition of Jones, 142 M 619, 386 P 2d 74.

94-7604. (12049) Applications for, how made.

References

Cited or applied in State v. Nicks, 131 M 567, 312 P 2d 519, 520; Petition of Davis, 139 M 619, 361 P 2d 963; Petition of Jones, 142 M 619, 386 P 2d 74.

94-7605. (12050) Motions for new trial, how made—hearing.

Counteraffidavit

Failure of trial court to grant motion for new trial in first degree murder case on alleged newly discovered evidence was not reversible error where counteraffidavit by county attorney showed that his office investigated each of the people named in the affidavits and that each of the parties denied that they had any evidence or information relative to the case. State v. Cor, — M —, 396 P 2d 86, 101. (Dissenting opinion, — M —, 396 P 2d 86, 102.)

References

Petition of Davis, 139 M 619, 361 P 2d 963.

CHAPTER 78—JUDGMENT—SUSPENSION OF SENTENCE AND PROBATION

Section 94-7821. Court may suspend sentence, when.
94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification.
94-7824. Effect of suspended sentence.
94-7831. Investigation.
94-7832. Sentence.
94-7833. Information from courts.
94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon.
94-7835. Court to determine type of confinement.
94-7836. Continuation of work.
94-7837. Disposition of prisoner's earnings.
94-7838. Reduction of sentence.
94-7839. Violation.
94-7840. Work arrangement in another county.
94-7841. Persons guilty of contempt.

94-7801. (12055) Appointing time for judgment.

References

State v. Porter, 143 M 528, 391 P 2d 704.

94-7803. (12057) Presence of defendant.

Court May Vacate and Repronounce Sentence

Where the trial court pronounced sentence against defendant convicted of second degree assault while defendant was absent, it was not error for the court, on its own motion, to vacate the sentence and repronounce the same sentence two days later in the presence of the defendant and his attorney. State v. Porter, 143 M 528, 391 P 2d 704.

94-7810. (12064) Arraignment of defendant for judgment.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 354.

94-7811. (12065) What cause may be shown against the judgment.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 355.

94-7812. (12066) If no cause shown, judgment to be pronounced.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 355.

94-7813. (12067) Circumstances in aggravation or mitigation, etc.

Examination of Witnesses in Open Court

The extent of defendant's punishment on plea of guilty to grand larceny should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in this section and section 94-7814 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in section 94-7831, then he must be governed by the provisions of this section and section 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

References

Petition of Amor, 143 M 305, 389 P 2d 54.

94-7814. (12068) Testimony, how presented.

Discretion of Trial Court

This section does not confer upon the trial court the choice or discretion to determine for itself whether the provisions of section 94-7813 and this section shall be observed or applied, or whether such provisions shall be ignored, either in part or in toto. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 352.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in this section and section 94-7813 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in section 94-7831, then he must be governed by the provisions of this section and section 94-7813. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where the trial court passed sentence upon receipt of private reports, including one requested by the trial judge as provided in section 94-7831, without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

Report of Investigator

Where trial judge requested report provided for in section 94-7831, unsworn representations and recommendations set forth in investigator's unsigned report privately offered to and privately received and adopted by the trial judge did not measure up to the requirements of this section and were not evidence. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 364.

References

Petition of Amor, 143 M 305, 389 P 2d 54.

94-7815. (12069) Duration of imprisonment on judgment to pay a fine.

Concurrent Sentences

Where defendant was convicted of a felony under the first portion of a consolidated information and of a misdemeanor under the second portion and the trial court decreed that the sentences could be served concurrently, the sentence for the felony should be served in the state prison, credit for the misdemeanor fine should be given at the same time, and any remaining time under the misdemeanor at the end of the state prison term should be served in the county jail. State v. Bogue, 142 M 459, 384 P 2d 749.

94-7821. (12078) Court may suspend sentence, when. In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this state, and it appears that the defendant has never before

been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, said court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents. Any judge, who has suspended a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence to revoke such suspension and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with his court as is authorized by him or his successor. Prior to such revocation of the order of such suspension, the person affected shall be given a hearing before said judge.

History: En. Sec. 1, Ch. 21, L. 1913; re-en. Sec. 12078, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1937; amd. Sec. 1, Ch. 194, L. 1955.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

Repealed by Implication

This chapter repealed section 94-4717, R. C. M. 1947, by implication as far as any application to suspended sentence is concerned. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

Revocation of Suspension

Where relator was sentenced to four years' confinement and the execution of the sentence was then suspended, which suspension was later revoked, the sentence commenced to run for all purposes on the date when judgment of conviction was entered. Any time between the imposition of the suspended sentence and its revocation should have been credited to the relator and failure to do so resulted in his illegal confinement. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification. When any judge has suspended a sentence of imprisonment as provided in section 94-7821, and has not ordered the prisoner placed under the jurisdiction of the state board of pardons, but has retained jurisdiction with the court, the clerk of said court shall nevertheless mail a full copy of the judgment of the court and the order suspending the sentence and certify the same to the state board of pardons, and bureau of identification at the state prison, or if the defendant would have been confined to an institution other than the state prison, then a copy shall be sent to the institution to which said court would have committed the defendant but for the suspending of the sentence.

History: En. Sec. 1, Ch. 40, L. 1939; amd. Sec. 2, Ch. 194, L. 1955.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

Propriety and effect of court's indication to jury resulting in recommendation of suspended sentence. 8 ALR 2d 1001.

94-7823. (12079) **Repealed.**

Repeal

This section (Sec. 2, Ch. 21, L. 1913; amd. Sec. 1, Ch. 53, L. 1935; amd. Sec. 1, Ch. 65, L. 1953), relating to persons not entitled to probation, was repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7824. (12080) **Effect of suspended sentence.** Whenever a sentence to any penal or other institution in this state has been imposed, but the execution thereof has been suspended and the defendant placed on probation, the effect of such order of probation shall be to place said defendant under the control and management of the state board of pardons and he shall be subject to the provisions of the probation, parole and executive clemency act.

History: En. Sec. 3, Ch. 21, L. 1913; re-en. Sec. 12080, R. C. M. 1921; amd. Sec. 3, Ch. 194, L. 1955.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners" and "subject to the provisions of the probation, parole and executive clemency act" for "subject to the same rules and regulations as applied to persons paroled from said institutions after a period of imprisonment therein."

Repealing Clause

Section 4 of Ch. 194, Laws 1955 read "That sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith, be, and the same are hereby repealed."

94-7825 to 94-7830. (12081 to 12086) **Repealed.**

Repeal

These sections (Secs. 4 to 9, Ch. 21, L. 1913), relating to probation, were repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7831. Investigation. No defendant convicted of a crime, the punishment for which may include imprisonment in the state prison, shall be sentenced or his case otherwise disposed of, until a written report of investigation by a probation and parole officer shall have been presented to, and considered by, the court, unless the court deems such report unnecessary. The court may, in its discretion, order a pre-sentence investigation for a defendant convicted of any lesser crime or offense. Whenever an investigation is required, the probation and parole officers shall promptly inquire into the circumstances of the offense, the attitude of the complainant, the social history, criminal record, and the present conditions of the defendant and his immediate family. All local and state police agencies shall furnish to the probation and parole officer such criminal records as the probation and parole officer may request. Where, in the opinion of the court or the investigating authority, it is found desirable, such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to an institution, the investigating agency shall send a report of such investigation to the institution at the time of commitment.

History: En. Sec. 5, Ch. 194, L. 1955.

Title of Act

An act to amend sections 94-7821, 94-7822, and 94-7824 of the Revised Codes of Montana, 1947, by substituting the words "Board of Pardons" for "Board of Prison Commissioners" and referring to the provisions of the Probation, Parole and Executive Clemency Act; providing for investigation by probation and parole officers prior to sentencing an individual

convicted of a crime, if deemed necessary by the court; providing the sentences courts are authorized by law to impose; requiring courts to transmit to board of pardons certain statistical data; repealing sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing a saving clause; and providing an effective date clause.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in sections 94-7813 and 94-7814 subject to the provisions of this section. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in this section, then he must be governed by the provisions of sections 94-7813 and 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

Report of Investigator

Unsworn representations and recommendations set forth in an investigator's unsigned report privately offered to and privately received and adopted by the trial judge does not measure up to the requirements of section 94-7814. They are not evidence. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 364.

References

Petition of Amor, 143 M 305, 389 P 2d 54.

94-7832. Sentence. Whenever any person has been found guilty of a crime or offense upon verdict or plea, the court may adjudge as follows:

(1) Release the defendant on probation, (2) Suspend the imposition or execution of sentence, (3) Impose a fine as provided by law for the offense, (4) Impose any combination of (1), (2), (3), or, (5) Commit the defendant to a correctional institution with or without a fine as provided by law for the offense.

History: En. Sec. 6, Ch. 194, L. 1955.

94-7833. Information from courts. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. Sec. 7, Ch. 194, L. 1955.

94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon, as the case may be, provided that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 9, Ch. 194, L. 1955.

Separability Clause

Section 8 of Ch. 194, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Forfeiture of Good Time Allowance

Under the provision of this section "that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act" which in no matter attempts to prohibit the board of prison commissioners from exercising their discretionary power as to the allowance or forfeiture of good time and their power to make such rules and regulations as are reasonable in connection with this power, the board can deprive a prisoner of his good time for parole violations. In re Pelke's Petition, 139 M 354, 365 P 2d 932, 934; In re Owens' Petition, 139 M 637, 365 P 2d 935.

94-7835. Court to determine type of confinement. A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county, and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

History: En. Sec. 1, Ch. 249, L. 1959.

Title of Act

An act authorizing the court to sentence a convicted misdemeanant to confinement with parole during the periods of the prisoner's employment; specifying the disposition to be made of the prisoner's earnings; setting forth conditions for diminution of the misdemeanant's sentence; declaring the consequences of the prisoner's violation of parole conditions; extending the provisions of this act to jail commitments for adjudicated contempt of a court of record; containing a savings clause, effective date and repealing all acts and parts of acts in conflict.

94-7836. Continuation of work. Upon the issuance of such an order under this act, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible; provided, however, that said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. Sec. 2, Ch. 249, L. 1959.

94-7837. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings, the sheriff shall pay the prisoner's board and personal expenses, both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any, and any balance shall be retained until his discharge.

History: En. Sec. 3, Ch. 249, L. 1959.

94-7838. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term, if, in the opinion of the court, the prisoner's conduct, diligence and general attitude merit such diminution.

History: En. Sec. 4, Ch. 249, L. 1959.

94-7839. Violation. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court; the court may

then require that the balance of his sentence be spent in full confinement and, further, the court may cancel any diminution of sentence granted under this act.

History: En. Sec. 5, Ch. 249, L. 1959.

94-7840. Work arrangement in another county. The court may, by order, authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana, to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county; provided, however, when such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person, and shall dispose of said moneys as provided by section 3 [94-7837] of this act.

History: En. Sec. 6, Ch. 249, L. 1959.

94-7841. Persons guilty of contempt. The provisions of this act shall extend to a person committed to the county jail by a court of record upon an adjudication of contempt of court.

History: En. Sec. 7, Ch. 249, L. 1959.

Savings Clause

Section 8 of Ch. 249, Laws 1959 read "If any competent court shall find any section or sections of this act to be unconstitutional or otherwise invalid, such finding shall not affect the validity of all remaining sections of this act, which can be given effect."

Repealing Clause

Section 9 of Ch. 249, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 10 of Ch. 249, Laws 1959 provided the act should be in effect from and after the date of its passage and approval. Approved March 12, 1959.

CHAPTER 80—THE EXECUTION

Section 94-8019. Western interstate corrections compact—contents.
94-8020. Commitment or transfer of inmate to institution outside of state.
94-8021. Effectuation of purposes of compact.
94-8022. Hearings requested by other states—power of board of pardons and paroles and state department of institutions to hold.
94-8023. Governor—power to enter into contracts.

94-8002. (12088) If for fine alone, execution to issue as in civil cases.

Cross-Reference

Penalty assessments for traffic offenses, sec. 75-5304.

94-8003. (12089) Judgment of fine and imprisonment, etc.

Alteration of Judgment

The warden of the state prison has no authority to change or alter a judgment of conviction in any particular. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 319.

References

State v. Bogue, 142 M 459, 384 P 2d 749.

94-8009. (12095) Insanity of defendant, how determined.

References

Cited in Solesbee v. Balkom, 339 U S 29, 94 L Ed 615, 70 S Ct 466 (dissenting opinion).

94-8019. Western interstate corrections compact—contents. The western interstate corrections compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

1. Purpose and policy. The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

2. Definitions. As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the Territory of Hawaii, or, subject to the limitation contained in article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

3. Contracts. (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states

may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

4. Procedures and rights. (a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane

manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

5. Acts not reviewable in receiving state; extradition. (a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to

this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

6. Federal aid. Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

7. Entry into force. This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

8. Withdrawal and termination. This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

9. Other arrangements unaffected. Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the

confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

10. Construction and severability. The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 236, L. 1959.

Title of Act

An act adopting the western interstate corrections compact for the development and execution of a program for the reciprocal confinement, treatment and rehabilitation of certain classes of convicted felons in institutions of participating states; directing cooperation of state agencies in the program; authorizing the holding of hearings requested by agencies of participating states; empowering the governor to enter into contracts under the compact with the approval of the board of examiners; and repealing all acts and parts of acts in conflict herewith; and providing an effective date.

94-8020. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an inmate (as defined in article II (d) of the western interstate corrections compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to article III of the western interstate corrections compact.

History: En. Sec. 2, Ch. 236, L. 1959; amd. Sec. 98, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "state agency" for "the board of prison commissioners" near the beginning of the section.

94-8021. Effectuation of purposes of compact. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

History: En. Sec. 3, Ch. 236, L. 1959.

94-8022. Hearings requested by other states—power of board of pardons and paroles and state department of institutions to hold. The board of pardons and paroles and the state department of institutions are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to article IV (f) of the western interstate corrections compact.

History: En. Sec. 4, Ch. 236, L. 1959; amd. Sec. 99, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "state department of institutions" for "the board of prison commissioners" near the beginning of the section.

94-8023. Governor—power to enter into contracts. The governor is hereby empowered to enter into such contracts recommended by the department of institutions on behalf of this state as may be appropriate to implement the participation of this state in the western interstate corrections compact pursuant to article III thereof.

History: En. Sec. 5, Ch. 236, L. 1959; amd. Sec. 100, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "recommended by the department of institutions" after "contracts" in the first sentence; and deleted a second sentence, which read: "No such contract shall be of any force or effect until approved by the board of examiners."

Separability Clause

Section 6 of Ch. 236, Laws 1959 read "The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby."

Repealing Clause

Section 7 of Ch. 236, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 236, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

CHAPTER 81—APPEALS TO SUPREME COURT—WHEN ALLOWED —HOW TAKEN—EFFECT THEREOF

94-8101. (12105) Defendant may appeal from any judgment.

Appeals from Justice Courts

The Supreme Court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. State ex rel. Estes v. Justice Court of Jefferson County, 129 M 136, 284 P 2d 249, 250.

References

Cited or applied in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

94-8103. (12107) Appeal, when may be taken by the defendant.

Denial of Petition for Writ of Error Coram Nobis

Leave to file an appeal from a denial of petition for a writ of error coram nobis by the district court was denied by the supreme court since no leave to file an appeal is required under the law and if an appeal was available from the district court order, the time therefor had not expired. Brown v. State, 140 M 289, 371 P 2d 262, 263.

Order Denying Petition for Writ of Prohibition

Order of district court denying petition of defendant for writ of prohibition to restrain justice court from further proceedings in criminal action was not a judgment and could not be appealed. State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542, 543.

References

Cited in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Zumwalt, 129 M 529, 291 P 2d 257, 259; State v. Greeno, 135 M 580, 342 P 2d 1052; State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

94-8104. (12108) In what cases by the state.

Appeals Authorized

An appeal by the state from the order of the court directing the jury to find for the defendant is expressly provided for in this section. State v. Rother, 130 M 357, 303 P 2d 393, 394.

Order Sustaining Demurrer to Complaint

An order sustaining a demurrer to a complaint does not fall within any of the provisions of this section and therefore is not an appealable order. State v. Slater, 130 M 630, 302 P 2d 470.

Right to Appeal Limited by This Section

Where defendant was convicted in justice of peace court and appealed to district court in which court the action was dismissed on defendant's motion, state had no right of appeal under this section. State v. McCluskey, 125 M 20, 229 P 2d 169.

A district court's order of dismissal of the complaint following an appeal from a conviction in a justice of the peace court does not fail within the provisions of this section and therefore is not an appealable order. State v. Becko, 125 M 76, 230 P 2d 768, 769.

References

Cited or applied in State v. Perez, 126 M 15, 243 P 2d 309, 310; State v. Widdicombe, 130 M 325, 301 P 2d 1116, 1117.

94-8105. (12109) Appeals, time limitation.

Denial of Motion for Mistrial

Part of defendant's appeal claiming that the trial court erred in denying motion of defendant for a mistrial was properly before the supreme court where it was taken within six months after the rendition of the judgment of conviction as prescribed by this section. State v. Tiedemann, 139 M 237, 362 P 2d 529, 530.

Denial of Motion for New Trial

Motion of state to strike defendant's third specification of error, contending that there was no substantial evidence to support the verdict or judgment of conviction, was granted where appeal was not taken within sixty days after the order denying the motion for a new trial. State v. Tiedemann, 139 M 237, 362 P 2d 529, 530.

Excuse for Failure to Take Appeal

In view of the time limit set forth in this section, death of defense counsel nearly a year after the trial and order of commitment was not sufficient showing to justify an original writ of habeas corpus in supreme court. Dryman v. State, 139 M 141, 361 P 2d 959.

Notice of Appeal

Where judgment of conviction had been rendered on October 29, 1959, and defendant did not file his notice of appeal until May 10, 1960, the supreme court lost jurisdiction to entertain the appeal. State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

Operation and Effect

Where person convicted in district court petitioned Supreme Court for writ of mandate to compel district to furnish "copy of trial and court record transcript" for purpose of appeal in forma pauperis, writ was denied where no timely application had been filed in accordance with section 94-8106. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Cited or applied in State v. Zumwalt, 129 M 529, 291 P 2d 257, 259; State v. Kuntz, 130 M 126, 295 P 2d 707, 708; Brown v. State, 140 M 289, 371 P 2d 262.

94-8106. (12110) Appeal, how taken.

Notice of Appeal

Where district court appointed counsel for the defendant and ordered preparation of the record for an appeal to the supreme court, all at public expense, defendant having had no voice in the choice, in the interest of justice it was incumbent upon the supreme court to consider the contended errors although court-appointed counsel failed to timely file the notice of appeal. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

Oral Request for Appeal Ineffective

Oral request of intention to appeal made orally in open court fails to conform to this section and is wholly ineffectual to give the Supreme Court jurisdiction. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Brown v. State, 149 M 289, 371 P 2d 262.

94-8109. (12113) Effect of an appeal by the defendant.

Certificate of Probable Cause

A certificate of probable cause should be granted by the district court whenever the question of whether or not the conviction will be sustained on appeal is fairly debatable. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 319.

94-8112. (12116) Duty of clerks upon appeal.

Duty of Defense Counsel

Where court-appointed counsel failed to advise the clerk's office as to what would be required for the record on appeal from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal and the cause was remanded to the district court with directions to revoke appointment of present counsel and appoint a competent and effective counsel to properly prosecute the appeal. State v. Bubnash, 139 M 517, 366 P 2d 155, 158.

94-8113. (12117) Appeal, when tried.

In General

Where appellant filed his transcript, and subsequently received seven separate orders for extensions of time to file his brief, court would refuse appellant's application to vacate the hearing of the appeal. State v. Cockrell, 130 M 552, 305 P 2d 337, 338.

CHAPTER 82—DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT ON APPEAL—JUDGMENT ON APPEAL

94-8207. (12125) Judgment without regard to technical errors.

Absence of Juror

Failure of a properly notified juror to be present when the jury was impaneled did not invalidate the trial as the defendant had the right only to reject jurors and not to select any particular juror. State v. Moran, 142 M 423, 384 P 2d 777.

Erroneous Instruction

Erroneous instructions are not cause for reversal in the absence of any prejudice. State v. Hay, 120 M 573, 194 P 2d 232, 236.

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Prejudice of Defendant

It is up to the supreme court to decide whether an error affects the substantial rights of the defendant, and the defendant must demonstrate prejudice from the record. State v. Straight, 136 M 255, 347 P 2d 482, 488; State v. Bubnash, 142 M 377, 382 P 2d 830.

Prejudice in a criminal case will not be presumed, but rather must appear from the denial or invasion of a substantial right from which the law imputes prejudice. State v. Straight, 136 M 255, 347 P 2d 482, 488; State v. Bubnash, 142 M 377, 382 P 2d 830.

Transcript of Evidence—Necessity

In order to give effect to this section to determine whether the erroneous instructions were merely technical errors, or affected the substantial rights of the accused, it is necessary that the supreme court have before it a transcript of the evidence. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Waiver of Error

References by county attorney as to the nature of the trial, an appeal from justice court, claimed as prejudicial error in the district court, was waived by counsel for defendant when he approved instructions to be given by the court which included reference to justice court proceedings and thereafter obtained deletion from the instructions of the phrase which read "and was found guilty following a jury trial." State v. Gilbert, 139 M 204, 362 P 2d 221, 224.

94-8209. (12126) What may be reviewed on an appeal, etc.

Denial of Motion for Mistrial

Part of defendant's appeal claiming that the trial court erred in denying motion of defendant for a mistrial was properly before the supreme court where it was taken within six months after the rendition of the judgment of conviction as prescribed by section 94-8105. State v. Tiedemann, 139 M 237, 362 P 2d 529, 530.

References

Cited in State v. Davis, 141 M 197, 376 P 2d 727, 729.

94-8210. (12127) May reverse, affirm or modify the judgment and order, etc.

Operation and Effect

Where Supreme Court reversed conviction of defendant and remanded cause to district court with directions that if defendant have a new trial the district court should first make inquiry into the defendant's insanity but if the prosecution is dismissed that the district court deliver the defendant to the court of another county which has continuing jurisdiction over the defendant so that the latter court may inquire into his mental condition and make such disposition of the defendant as is required by law; and thereafter the prosecution was dismissed, the trial court then was compelled to deliver the defendant to the other district court and county attorney could not file a new information. The trial court was bound to follow the mandate of the Supreme Court as found in the remittitur and mandamus will lie to require that the district court follow such mandate. State ex rel. Kitchens v. District Court, 130 M 57, 294 P 2d 907. (Dissenting opinion, 130 M 57, 294 P 2d 907, 911.)

Reduction of Sentence

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations as provided in sections 94-7813 and 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

References

Cited in State v. Brown, 136 M 482, 351 P 2d 219, 222.

94-8215. (12132) Jurisdiction ceases after judgment remitted.

Operation and Effect

Where Supreme Court reversed conviction and the remittitur went down in due course and was filed with the lower court, the Supreme Court at that time lost jurisdiction in the case. Specifically it lost any jurisdiction it may have had theretofore to alter in any particular either the opinion or the mandate which followed upon that opinion, certainly unless the remittitur were first recalled. State ex rel. Kitchens v. District Court, 130 M 57, 294 P 2d 907, 908.

CHAPTER 83—IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL

94-8301. (12133) Admission to bail defined.

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. 23 ALR 2d 803.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 ALR 2d 945.

94-8303. (12135) Offense not bailable.

Discretion of Trial Court

Bail is a matter within the discretion of the trial court and its ruling will not be disturbed unless a clear abuse of discretion appears. State v. London, 131 M 410, 310 P 2d 571, 580.

Denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. State v. London, 131 M 410, 310 P 2d 571, 580.

94-8305. (12137) When admitted to bail after conviction, etc.

Abuse of Discretion

District court did not abuse its discretion when it refused to fix bail on appeal of defendant sentenced to state prison. Bubnash v. State, 139 M 639, 366 P 2d 867.

CHAPTER 85—BAIL ON INDICTMENT OR INFORMATION BEFORE CONVICTION

Section 94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate.
94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash.
94-8510. Certification of names of sureties—withdrawal by surety company.

94-8501. (12145) **When the offense is not capital.**

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 443.

94-8506. (12150) **Sections applicable to qualifications, etc.**

Amount of Bail

Court did not err in refusing defendant's motion to reduce bail which was initially set at $25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to $7,500 which was a very reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407, 408.

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate. (A) Any domestic or foreign surety company which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed one hundred dollars ($100.00) with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state, by filing with the commissioner of insurance an undertaking thus to become surety.

(B) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(1) The name and address of the automobile club or clubs, automobile association, or insurance company or companies, or associations with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed one hundred dollars ($100.00) of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(C) The term, guaranteed arrest bond certificate, means any printed card or other certificate issued by an automobile club, association or insurance company, to any of its members or insureds, which said card or certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana, guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or for-

feiture imposed on such person in an amount not to exceed one hundred dollars ($100.00).

History: En. Sec. 1, Ch. 39, L. 1957.

Title of Act

An act authorizing qualified surety companies to become surety with respect to guaranteed arrest bond certificates of automobile clubs and associations and insurance companies authorized to write automobile liability insurance within the state of Montana, and requiring the acceptance of such certificates in lieu of cash or property bail in the event of certain violations of motor vehicle laws; providing that all acts and parts of acts in conflict herewith are repealed.

94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash. Any guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state, as provided in section 1 [94-8508] hereof, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed one hundred dollars ($100.00), as a bail bond to guarantee the appearance of such person, in any court, including municipal courts, in this state, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as provided by law, and that any such guaranteed arrest bond certificate posted as bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. Sec. 2, Ch. 39, L. 1957.

94-8510. Certification of names of sureties—withdrawal by surety company. The commissioner of insurance shall certify to each justice of the peace, police magistrate and district judge the names of surety companies who have become sureties with respect to guaranteed arrest bond certificates, and shall likewise immediately notify such official upon the withdrawal of such company as surety. No such withdrawal by any company shall be effective for thirty (30) days after the filing thereof with the state insurance commissioner.

History: En. Sec. 3, Ch. 39, L. 1957.

Repealing Clause

Section 4 of Ch. 39, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 87—SURRENDER OF DEFENDENT—FORFEITURE OF BAIL—RECOMMITMENT OF DEFENDANT

Section 94-8704. How forfeited and how forfeiture discharged.

94-8704. (12160) **How forfeited and how forfeiture discharged.** (1) Before a bail undertaken or deposit is forfeited, it shall be shown that

the bondsman or surety was mailed notice seventy-two (72) hours before the time of required appearance of the defendant unless the time of required appearance was within seventy-two (72) hours from the time of arrest or unless a specific time of appearance was stated on the face of the bond, citation or summons.

(2) If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking, or the deposit to be discharged upon such terms as may be just.

History: Ap. p. Sec. 124, p. 236, Bannack Stat.; re-en. Sec. 255, p. 229, Cod. Stat. 1871; re-en. Sec. 255, 3d Div. Rev. Stat. 1879; re-en. Sec. 256, 3d Div. Comp. Stat. 1887; en. Sec. 2400, Pen. C. 1895; re-en. Sec. 9467, Rev. C. 1907; re-en. Sec. 12160, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1965. Cal. Pen. C. Sec. 1305.

Amendment

The 1965 amendment inserted a new subsection (1) and designated the previous text as subsection (2).

94-8705. (12161) Default of person under bail.

Cross-Reference

Penalty assessment on forfeiture of bail for traffic offenses, sec. 75-5304.

CHAPTER 88—WHO MAY BE WITNESSES IN CRIMINAL ACTIONS

94-8801. (12175) Who are competent witnesses.

References

State v. Barick, 143 M 273, 389 P 2d 170.

94-8802. (12176) Competency of husband and wife as witnesses.

Operation and Effect

It was error to permit wife to testify against husband in trial for assault by unlawfully threatening another by pointing a loaded revolver in violation of subd. 4 of section 94-602 where no offense against the wife was charged. State v. Storm, 124 M 102, 220 P 2d 674, 675.

94-8803. (12177) When the defendant is not a competent witness, etc.

Privilege against Self Incrimination

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. The cases of State v. Sparks, 40 M 82, 105 P 87 and State v. Willette, 46 M 326, 127 P 1013, to the extent they impose a burden to explain or testify concerning any charge of possessing stolen goods are overruled. State v. Greeno, 135 M 580, 342 P 2d 1052.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767; State v. London, 131 M 410, 310 P 2d 571, 585; State v. Barick, 143 M 273, 389 P 2d 170.

94-8804. (12178) **Testimony of several persons concerned, etc.**

Testimony of Accomplice

An accomplice may testify in a criminal case even though he is a convicted felon at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 89—COMPELLING ATTENDANCE OF WITNESSES—SUBPOENAS

94-8901. (12179) **Subpoena defined and who may issue.**

References

State v. Lagge, 143 M 289, 388 P 2d 792.

94-8902. (12180) **Form of subpoena.**

References

State v. Lagge, 143 M 289, 388 P 2d 792.

94-8904. (4945) **Criminal actions not more than six to be subpoenaed, etc.**

Operation and Effect

This statute is to control the expenses of the county and is a limitation upon the clerk of the court and not upon the judge. Where the court allows more than six witnesses to testify for the state the defendant is not prejudiced by the absence of an express order made by the court. State v. Cockrell, 131 M 254, 309 P 2d 316, 321.

CHAPTER 90—WITNESSES FROM WITHOUT STATE—HOW SECURED IN CRIMINAL PROCEEDINGS

Section 94-9003. Witness from another state summoned to testify in this state.

94-9003. Witness from another state summoned to testify in this state. (1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation, which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate will be presented to a judge of a court of record in the county in which the witness is found.

(2) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that such witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which such determination said certificate shall be prima facie proof, may order that said witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to such officer to take such witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

(3) If the witness is summoned to attend and testify in this state, he shall be tendered the sum of ten cents (10¢) a mile for each mile and five dollars ($5.00) for each day that he is required to travel and attend as a

witness, provided further that in those cases in which the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount or amounts in excess of the amount hereinbefore in this paragraph provided, then said witness may be tendered said amount or amounts so required by said state to be tendered though the said amount or amounts so required to be tendered are in excess of the said amounts in this paragraph provided for. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949.

Amendment

The 1949 amendment added the proviso to the first sentence of paragraph (3).

Repealing Clause

Section 2 of Ch. 117, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 117, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

CHAPTER 93—PROCEEDINGS ON INQUIRY AS TO SANITY OF A DEFENDANT

94-9301. (12213) Insane person cannot be tried or punished.

Declaratory of Common Law

This statute is declaratory of the common law as it has existed at least since Blackstone's day. Comparable or similar statutes have been enacted in all but four states of the Union. In these four, it seems the common law without the aid of statute remains in force. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1083.

94-9302. (12214) Doubts as to sanity of defendant, how determined, etc.

Construction

A doubt within the meaning of this section may come from matters which are brought to the attention of the trial judge wholly beyond the common-law record or which although occurring at the trial do not appear in the record, or which although shown in the record are not admissible as evidence bearing upon any issue before the trial court on the merits. The sources of that doubt need not be evidence. It is enough that the doubt comprehended by the statute arises from credible and trustworthy information brought to the attention of the trial court from any source at all. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1083.

The question whether such a doubt is raised in any given case addresses itself directly to the sound judicial discretion of the trial court. But like any other matter thus committed to the discretion of a court or its judge this discretion may not be exercised arbitrarily. Its abuse will be reviewed on appeal, and where an abuse does appear the reviewing court will say as a matter of law a doubt did arise which commanded action, and which therefore works a reversal for the error of the judge below in failing to heed its command. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1083.

The weight of successive adjudications by four different courts and judges, in other proceedings, that the defendant was insane, were sufficient as a matter of law to raise the doubt required by this section. The testimony of a witness that the defendant was sane does not alter the case, for at this stage of the proceedings the court is only concerned with the preliminary question whether there is reason to doubt the defendant's sanity. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1085.

References

Cited or applied in State ex rel. Kitchens v. District Court, 130 M 57, 294 P 2d 907, 908; Petition of Jones, 143 M 19, 386 P 2d 747.

94-9303. (12215) **Trial of the question of insanity—charge of court.**

Presumption of continuing insanity as applied to accused in criminal case. 27 ALR 2d 121.

CHAPTER 94—COMPROMISING OFFENSES BY LEAVE OF COURT

94-9401. (12220) **Compromise of offense for which civil action, etc.**

References

State v. Johnston, 140 M 111, 367 P 2d 891, 893.

94-9402. (12221) **Compromise by permission of the court, etc.**

References

State v. Johnston, 140 M 111, 367 P 2d 891, 893.

94-9403. (12222) **No public offense to be compromised except.**

Restitution

Where one is charged with uttering and delivering a fictitious check in violation of section 94-2007 restitution is no defense. State v. Johnston, 140 M 111, 367 P 2d 891, 893.

CHAPTER 95—DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS

94-9501. (12223) **When action may be dismissed.**

Dismissal on Other Grounds

Where district court dismissed information on grounds other than that provided by this section and record failed to show whether this ground was urged at the hearing in the district court or any ruling thereon, the case was reversed and the cause remanded to the district court for further proceedings not inconsistent with the opinion of the Supreme Court. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

Interruption of Period

From the six months mentioned in subdivision 2 of this section must be excluded the time elapsing between the date the demurrer to the information was erroneously sustained and the date of the remittitur of the Supreme Court reversing the decision. State v. Israel, 124 M 152, 220 P 2d 1003, 1013.

Operation and Effect

Whether or not motion to dismiss information under this section because of delay in trial should be granted or denied depends on whether or not "good cause" is shown for delay. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

In a prosecution for a misdemeanor, where the complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not one under this section which would be a bar to the prosecution under section 94-9507. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859, 860, 861, distinguished in 130 M 299, 302, 300 P 2d 952, 953.

References

Cited or applied in State v. Porter, 130 M 299, 300 P 2d 952, 953; State ex rel. Keast v. District Court, 135 M 62, 336 P 2d 699, 700.

94-9502. (12224) **Case may be continued.**

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State v. Porter, 130 M 299, 300 P 2d 952, 953.

94-9505. (12227) Dismissed on motion of court or application, etc.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 973; State v. Piveral, 127 M 427, 265 P 2d 969, 970.

94-9507. (12229) Dismissal a bar in misdemeanor, but not in felony.

Bar—How Raised

The defense of the bar arising under this section may properly be raised by a plea of not guilty, and all matters in proof thereof are admissible under the plea of not guilty by virtue of section 94-6805. State v. Porter, 130 M 299, 300 P 2d 952, 954.

Dismissal on Demurrer

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of section 18, article III, of the Montana Constitution, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. State v. Moore, 138 M 379, 357 P 2d 346, 347.

Information or Indictment Required for Bar

This section applies only to offenses where there is a filing of an information or the finding of an indictment. State v. Moore, 138 M 379, 357 P 2d 346, 347.

Operation and Effect

This section applies only to orders of dismissal as provided in section 94-9501. Therefore, in a justice of the peace proceeding where a complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not a bar to the prosecution for the misdemeanor. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859 to 861, distinguished in 130 M 299, 302, 300 P 2d 952, 953 and in 138 M 379, 381, 357 P 2d 346.

Release on Habeas Corpus

Where the person accused of a felony has been released on a habeas corpus under the provisions of section 94-9501, the county attorney is within his rights to ask leave to file a new information charging the same offense. State ex rel. Keast v. District Court, 135 M 62, 336 P 2d 699.

References

Cited or applied in State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248, 250.

CHAPTER 98—PROBATION, PAROLE AND CLEMENCY

Section 94-9821. Act, how cited.
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94-9849. Governor to report to legislative assembly.
94-9850. Cases of juveniles excluded.
94-9851. Effective date—application to persons presently on parole or probation or eligible for.

94-9801 to 94-9820. (12247 to 12266) Repealed.

Repeal

These sections (Secs. 2630 to 2646, Pen. C. 1895; Secs. 3 to 6, 8 to 12, p. 192, L. 1891; and Secs. 1 to 3, Ch. 95, L. 1907), relating to pardons and paroles, were repealed by Sec. 31, Ch. 153, Laws 1955. For new provisions, see secs. 94-9821 to 94-9851.

94-9821. Act, how cited. This act shall be known and may be cited as the Probation, Parole and Executive Clemency Act.

History: En. Sec. 1, Ch. 153, L. 1955.

Title of Act

An act creating a board of pardons and prescribing the appointment and composition thereof, with power and duty to grant paroles, within restrictions, to supervise probations and suspended sentences, to recommend after duly noticed public hearing that the governor remit fines and forfeitures, grant pardons, absolute or conditional; grant commutations of punishments after conviction and judgment for offenses committed against the criminal laws of this state; providing for a director and a staff to administer the provisions of this act, and defining their duties; requiring records of board proceedings; providing for arrest of parolees or probationers upon violation of conditions of release; providing penalties for parole or probation violators; defining rights of attorneys to hearing before the board; providing the board with power to subpoena witnesses, and make rules and regulations under the provisions of this act; defining governor's power to respite; requiring governor to report acts of executive clemency to the legislative assembly; excluding juveniles; providing a saving clause; repealing sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; and providing an effective date clause.

Good Time Allowance

Under the "new parole laws" (sections 94-9821 to 94-9851) a prisoner retains the right to earn good time under the old good time statutes (sections 80-739, 80-741, repealed by Laws 1955, ch. 117, sec. 2 and section 80-740) and he is subject to forfeiture of this good time. Hill v. State, 139 M 407, 365 P 2d 44, 46, 95 ALR 2d 1261.

The "new parole laws" (sections 94-9821 to 94-9851) have nothing to do with the forfeiture of earning of good time. Hill v. State, 139 M 407, 365 P 2d 44, 46, 95 ALR 2d 1261.

94-9822. Board of pardons—organization. There is hereby created a state board of pardons, hereinafter referred to as the "board," consisting of three (3) members who shall be appointed by the governor with the advice and consent of the senate. The board shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of such system and the laws upon which it is based. The members of the board shall serve on a per diem basis and shall be paid at the rate of fifteen dollars ($15.00) per day of service, plus actual and necessary expenses, and shall meet at least once each month at the state prison. The members of the board shall serve for terms of six (6) years, and until their successors are duly appointed and qualified, provided, however, that two (2) of those first appointed after this act takes effect, shall serve for terms of two (2) and four (4) years, respectively. The governor shall appoint the members of the board and call a meeting thereof within thirty (30) days of the effective date thereof. The board shall immediately thereafter set up the system herein provided for, and make the necessary appointments of its director, and other

employees. Suitable quarters, supplies and equipment shall be provided. The principal office of the board shall be in Deer Lodge, Montana. A vacancy occurring before the expiration of any member's term of office shall be filled in the same manner for the unexpired portion of said term. The governor may at any time, after notice and hearing, remove any member for neglect of duty, malfeasance, misfeasance or nonfeasance in office.

History: En. Sec. 2, Ch. 153, L. 1955.

Powers of Board

The power of the state board of pardons is limited to permitting a convict to leave the enclosure of the state prison after he has served a period of confinement fixed for him by the board in accordance with section 94-9833. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

Neither section 94-9832 nor any other section in the code gives the state board of pardons power to extinguish a former sentence by paroling a man to a subsequent sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

Maximum sentences cannot be changed or altered by the state board of pardons. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

The state board of pardons does not have the right to pardon or commute a sentence as the exclusive power to pardon and commute a sentence rests in the office of the governor under Art. VII, sec. 9 of the Montana Constitution. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553. 555.

94-9823. Definitions. When used in this act, unless the context otherwise requires:

(a) "Probation" is the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(b) "Parole" is the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(c) "Executive clemency" refers to the powers of the governor as provided by section 9 of Article VII of the Constitution of the state of Montana.

History: En. Sec. 3, Ch. 153, L. 1955.

Effect of Granting of a Parole

A parole releases from confinement a convict who has been committed to an institution, before the expiration of his sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

The granting of a parole to an escape sentence by virtue of the wording of section 94-4203 did not result in a discharge of the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

94-9824. Seal, orders, records, annual report. The board shall adopt an official seal of which the courts shall take judicial notice. A majority of the board shall constitute a quroum. Decision of the board may be by majority vote. The orders of the board shall not be reviewable except as to compliance of terms of this act. The board shall keep a record of its acts and decisions available to the public, providing, however, that all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by any member or employee of the board, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge; provided, however, that the board or a court may in its discretion, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection

of the report or any parts thereof by the prisoner or his attorney. At the close of each fiscal year the board shall submit to the governor, to the board of prison commissioners and to the legislature, a report with statistical data of its work, including research studies which it may make of probation, sentencing, parole or related functions, and a compilation and analysis of dispositions by criminal courts throughout the state.

History: En. Sec. 4, Ch. 153, L. 1955.

94-9825. Director and employees—salaries to be paid monthly—approval and auditing. The board shall appoint a state director of probation and parole, hereinafter referred to as the "director" who shall appoint, with the approval of the board, an assistant director, probation and parole officers and other employees required to administer the provisions of this act. The director shall receive an annual salary of not more than eight thousand four hundred dollars ($8,400) per annum payable monthly, which shall include compensation for all services rendered as interstate compact administrator. All other officers and employees of the board shall receive such compensation for their services as may be fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform such duties as are imposed on them by law or by the board.

The salaries of all officers and employees of the board shall be paid monthly after such salaries have been approved by the board upon claims therefor.

History: En. Sec. 5, Ch. 153, L. 1955; amd. Sec. 1, Ch. 122, L. 1957; amd. Sec. 11, Ch. 97, L. 1961; amd. Sec. 10, Ch. 225, L. 1963.

Amendments

The 1957 amendment raised the salary of the director from $6,000 to $7,000 per annum.

The 1961 amendment deleted from the end of the section the words "to be audited and approved by the state board of examiners."

The 1963 amendment substituted the provision for a maximum salary of $8,400 for the director for a provision fixing the salary at $7,000; and added to the second sentence the words "which shall include compensation for all services rendered as interstate compact administrator."

Repealing Clause

Section 2 of Ch. 122, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 122, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

Section 11 of Ch. 225, Laws 1963 read "This act shall be effective from and after February 28, 1963."

94-9826. Expenses to be paid. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the board either within or without the state, shall, unless otherwise provided in this act, be paid from funds appropriated, after being approved by the board upon claims therefor.

History: En. Sec. 6, Ch. 153, L. 1955; amd. Sec. 12, Ch. 97, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section the words "to be audited and approved by the state board of examiners."

94-9827. Legal adviser of the board. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955.

94-9828. Duties of the director. The director shall be the executive officer of the board. He shall be responsible for such investigation and supervision as may be requested by the board or the courts. He shall, subject to the approval of the board, divide the state into districts and assign probation and parole officers to serve in the various districts and courts; he shall obtain office quarters for such staff in each district as may be necessary. He shall assign the secretarial, bookkeeping and accounting work to the clerical employees, including receipt and disbursement of money. He shall direct the work of the probation and parole officers and other employees assigned to him. He shall formulate methods of investigation, supervision, record keeping and reports. He shall conduct training courses for the staff. He shall seek to cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole. He shall further be charged with the administration of the provisions of the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955.

94-9829. Duties of probation and parole officers. Probation and parole officers shall investigate all persons referred to them for investigation by the director of probation and parole or by any court to which they are instructed by the director to serve. They shall furnish to each person released under their supervision a written statement of the conditions of probation or parole and shall instruct him regarding same. They shall keep informed of the conduct and condition of each person released under their supervision and use all suitable methods to aid and encourage him to bring about improvement in his conduct and condition. Probation and parole officers shall keep detailed records of their work. They shall supervise the collection and disbursement of all moneys when so instructed by the director in accordance with the orders of a court. They shall make such reports in writing as the director may require.

History: En. Sec. 9, Ch. 153, L. 1955.

94-9830. Conditions of probation or suspension of sentence. The board may adopt general rules or regulations concerning the conditions of probation or suspension of sentence. Such conditions shall apply in the absence of any specific or inconsistent conditions imposed by a court. Nothing herein contained shall limit the authority of the court to impose or modify any general or specific conditions of probation or of suspension of sentence.

The probation and parole officer may recommend, and by order duly entered, a court may modify any condition of probation or suspension of sentence at any time. Due notice shall be given to the probation and parole officer before any such conditions are modified and he shall be given an

opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation and parole officer and the probationer.

History: En. Sec. 10, Ch. 153, L. 1955.

94-9831. Arrest—subsequent disposition. At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation and parole officer may arrest such defendant without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime, shall be applicable to the defendants arrested under these provisions.

Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner, and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary. If the violation is established, the court may continue to revoke the probation or suspension of sentence, and may require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court, shall, after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from, or to have fled from, justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served on probation or suspended sentence, shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955.

Commencement of Sentence

Where relator was sentenced to four years' confinement and the execution of the sentence was then suspended, which suspension was later revoked, the sentence commenced to run for all purposes on the date when judgment of conviction was entered. Any time between the imposition of the suspended sentence and its revocation should have been credited to the relator and failure to do so resulted in his illegal confinement. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

94-9832. Parole authority and procedure. The board shall release on parole any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided,

1. That no convict serving a time sentence shall be paroled until he shall have served at least one-quarter (¼) of his full term, less good time allowances off, as provided in section 80-740; except that any convict serving a time sentence may be paroled after he shall have served, upon his term of sentence, twelve and one-half (12½) years;

2. No convict, serving a life sentence, shall be paroled until he shall have served twenty-five (25) years, less the good time allowances off, as provided in section 80-740. All paroles shall issue upon order of the board, duly adopted.

Within two (2) months after his admission and at such intervals thereafter as it may determine, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the board shall have the prisoner appear before it and shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

History: En. Sec. 12, Ch. 153, L. 1955.

Discretion of Board

Since the release of inmates on parole or by virtue of commutation of sentence rests in the discretion of the state board of pardons, their determination is not subject to review by the courts. Goff v. State, 139 M 641, 367 P 2d 557, 558.

Effect of Granting of a Parole

A parole releases from confinement a convict who has been committed to an institution, before the expiration of his sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

The granting of a parole to an escape sentence by virtue of the wording of section 94-4203 did not result in a discharge of the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Hearing

Hearings involving inmates of the state prison are set by the state board of pardons and are entirely within their discretion. The only requirement for a hearing or interview arises when the board is about to order a parole. Goff v. State, 139 M 641, 367 P 2d 557, 558.

In petition for writ of habeas corpus brought by an inmate of the state prison, allegation of bias and prejudice by a member of the state board of pardons was without merit, where the files of the board disclosed that such member had disqualified himself from participating in any hearing involving petitioner. Goff v. State, 139 M 641, 367 P 2d 557, 558.

Power of Board

This section does not give the state board of pardons power to extinguish a former sentence by paroling a man to a subsequent sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

Right to Parole

All inmates confined in the Montana state prison are eligible for parole except those under death sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

In the case of consecutive sentences a prisoner is required to serve a period equivalent to one-fourth of the combined total of each sentence (less good time) before he is eligible for parole although subsequent sentence is for escape. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

A prisoner is not entitled to release as a matter of right until he has completed his maximum sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556; Goff v. State, 139 M 641, 367 P 2d 557, 559.

References

Cited or applied in State ex rel. Ball v. Burrell, 129 M 585, 292 P 2d 144.

94-9833. Conditional release. A prisoner having served one-fourth (¼) of his term or terms, less good time allowances, shall upon parole, be deemed as released on parole until the expiration of the maximum term or terms for which he was sentenced less good time allowances as provided in section 80-740.

History: En. Sec. 13, Ch. 153, L. 1955.

Good Time Allowance

Under section 80-740 a convict, by escaping, forfeits all his good time. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Right to Parole

An inmate with multiple sentences, whether concurrent or consecutive, is eligible for parole. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

94-9834. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board, or its properly accredited representatives, access at all reasonable times to any prisoner over whom the board has jurisdiction under this act, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955.

94-9835. Persons may be heard—counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955.

94-9836. Subpoenas. The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof. Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law-enforcement officer. In case of contumacy by, or refusal of any person to obey a subpoena issued to such person, any

member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail, or refuse to attend and testify, or to answer any lawful inquiry or to produce records, books, papers and other documents if it is in his power to do so, in obedience to a subpoena of the board or any member thereof, shall be punished by a fine of not more than two hundred dollars ($200) or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955.

94-9837. Rules. The board shall have the power and duty to make rules for the conduct of persons heretofore or hereafter placed on parole or on probation under the supervision of the board by any court in this state, and for the investigation and supervision of such persons, except that the board shall not make any rule applying to a person on probation which conflicts with the conditions of probation imposed by the court.

History: En. Sec. 17, Ch. 153, L. 1955.

94-9838. Return of parole violator. At any time during release on parole or conditional release the board may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner shall remain incarcerated in such institution.

Upon such arrest and detention, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the board shall cause the prisoner to be promptly brought before it for a hearing on the

violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board.

History: En. Sec. 18, Ch. 153, L. 1955.

94-9839. Service of term for additional crime. Any prisoner who commits a crime while at large upon parole or conditional release, and who is convicted and sentenced therefor, shall serve such sentence concurrently with the terms under which he was released, unless otherwise ordered by the court in sentencing for the new offense.

History: En. Sec. 19, Ch. 153, L. 1955.

94-9840. Discharge of prisoner, parolee or conditional releasee. The period served on parole or conditional release shall be deemed service of the term of imprisonment, and, subject to the provisions contained in section 18 [94-9838] herein relating to a prisoner who is a fugitive from, or has fled from, justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: En. Sec. 20, Ch. 153, L. 1955.

94-9841. Cases of executive clemency. The board shall investigate and report to the governor with respect to all cases of pardons, remissions of fines and forfeitures, and commutations of punishment after conviction and judgment for any offenses committed against the criminal laws of the state. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955.

94-9842. Notice of hearing applications for executive clemency. After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning ————————, a convict confined in the

State Prison (or to one ————, who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of ———— committed at ————, in the County of ————, State of Montana, on the —— day of ————, 19—, and sentenced for a term of —— years.

"Therefore, be it ordered that —— the —— day of ————, 19—, be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon (or commutation, remission of the fine or forfeiture) are hereby notified to be present at —— o'clock of said day, at ————.

"Further, ordered that a copy of this order be printed and published in the ———— (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at ———— in the county of ———— ————, once each week for two weeks beginning, ————, 19—, and ending ————."

History: En. Sec. 22, Ch. 153, L. 1955.

94-9843. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated, at least once a week for two weeks prior to the hearing, and at the same time cause to be deposited in the postoffice at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney and sheriff, respectively, of the county where the crime was committed, and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955.

94-9844. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955.

94-9845. Record of meeting, what to contain. At the hearing the board must cause to be kept a record showing:

1. The name of all persons appearing before the board on behalf of the person pardoned by the governor;

2. The name of all persons appearing before the board in opposition to the granting of the same;

3. The testimony of all persons giving evidence before the board;

4. That the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955.

94-9846. When publication not necessary. No publication need be made as provided in sections 22, 23 and 24 [94-9842, 94-9843 and 94-9844], in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten (10) days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955.

94-9847. Decision to be made. Within thirty (30) days after the hearing of any case, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision, together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955.

94-9848. Governor may respite. The governor has the power to grant respites after conviction and judgment, for any offenses committed against the criminal laws of the state, for such time as he thinks proper.

History: En. Sec. 28, Ch. 153, L. 1955.

94-9849. Governor to report to legislative assembly. The governor must communicate to the legislative assembly at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955.

94-9850. Cases of juveniles excluded. The provisions of this act shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955.

94-9851. Effective date—application to persons presently on parole or probation or eligible for. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws, with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon as the case may be, provided that no person convicted and sentenced before the effective date hereof shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 33, Ch. 153, L. 1955.

Repealing Clause

Section 31 of Ch. 153, Laws 1955 read "That sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

Separability Clause

Section 32 of Ch. 153, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

CHAPTER 99—BASTARDY PROCEEDINGS

94-9901. (12267) **Complaint in bastardy, what to contain, how entitled.**

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see Table A, M. R. Civ. P.

94-9908. (12274) **Power of court over judgments and orders.**

Foreign filiation or support order in bastardy proceedings, requiring periodic payments, as extraterritorially enforceable. 16 ALR 2d 1098.

CHAPTER 100—JUSTICES' AND POLICE COURT PROCEEDINGS—APPEALS

Section 94-100-25. Proceedings on plea of guilty or on conviction.

94-100-1. (12302) **Proceedings must be by complaint.**

Sufficiency of Complaint

A complaint was sufficient where it stated facts constituting a public offense and charged a violation of the provisions of section 4-414, which was a misdemeanor (4-439) within the jurisdiction of the justice of the peace court under section 94-4916. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-100-2. (12303) **When warrant of arrest must issue—form.**

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 215.

94-100-4. (12305) **Plea, how put in.**

Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written "Special Plea in Bar" and ordering the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-6802. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861.

94-100-10. (12311) **New complaint.**

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 207.

94-100-25. (12326) **Proceedings on plea of guilty or on conviction.** When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had.

History: En. Sec. 2704, Pen. C. 1895; re-en. Sec. 9608, Rev. C. 1907; re-en. Sec. 12326, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1955. Cal. Pen. C. Sec. 1445.

Amendment

The 1955 amendment substituted the word "or" for "and" between the words "fine" and "imprisonment."

94-100-33. (12334) **Defendant may appeal.**

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542.

94-100-34. (12335) Notice of appeal.

Application of Section

This section permitting appeal by notice in open court does not apply to the taking of an appeal to the Supreme Court from a judgment of a district court. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Cited in State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542; Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855.

94-100-35. (12336) Undertaking for fine and costs.

Objection to Form of Appeal

Where defendant sought to appeal decision of justice of peace and although undertaking was not in proper form, it was approved by the justice, it was improper for the district court to dismiss the appeal for insufficiency of form of undertaking when no objection to the form was made in the justice's court of original jurisdiction. Reidelbach v. District Court, 142 M 52, 381 P 2d 470; Clark v. District Court, 142 M 56, 381 P 2d 472.

94-100-38. (12339) Trial anew.

Effect of Payment of Fine after Appeal

Where defendant was convicted in a police court of the violation of a town ordinance and appealed to the district court and served notice of his appeal to the district court while in jail serving a sentence imposed for his nonpayment of the fine, the fact the defendant had paid the fine before the hearing in the district court did not effect an abandonment of his appeal. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 857.

Operation and Effect

Where an appeal is taken to the district court from a conviction in a police court for a liquor law violation, but neither the city nor the defendant requested the cause be set for trial, the judge of the court could not order the appeal dismissed "for want of prosecution" without giving notice to the defendant. Such an order is void and in excess of jurisdiction. State ex rel. Healy v. District Court, 125 M 77, 230 P 2d 763.

Trial de Novo

The district court does not, on appeal from a police court, sit as a court of review, but it tries the cause de novo. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 857.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 208.

94-100-40. (12341) Judgment of imprisonment or fine, how executed.

References

Cited or applied in Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 856.

94-100-41. (12342) Defendant may be admitted to bail, etc.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 207.

CHAPTER 101—THE WRIT OF HABEAS CORPUS

94-101-1. (12348) Who may prosecute writ.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see Table A, M. R. Civ. P.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

94-101-2. (12349) Application for, how made.

References

Cited or applied in Application of Enke, 129 M 353, 287 P 2d 19, 22, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

94-101-4. (12351) **Writ must be granted without delay.**

Mandamus to Compel Action by District Court

A writ of mandate to compel district court to take action on a petition for a writ of habeas corpus was denied by the supreme court where petitioner did not establish a clear legal right to have the writ of habeas corpus issued. Petition of John J. Tomich, 139 M 624, 365 P 2d 950.

94-101-14. (12361) **When to remand party.**

Denial of Federal Constitutional Rights

A writ of habeas corpus is not available in the state courts of Montana to correct denials of federal constitutional rights. Brown v. State, 202 F Supp 29, 30.

94-101-15. (12362) **Grounds of discharge in certain cases.**

Motives of Prosecution

On a hearing of a habeas corpus sued out for the liberation of one who is sought to be extradited for the violation of the criminal laws of another state, upon a warrant of the governor issued upon a requisition of a demanding state, it is not admissible to hear evidence upon, or to inquire into, the motives or purposes of the prosecution. State v. Booth, 134 M 235, 328 P 2d 1104, 1111.

94-101-21. (12368) **Person illegally restrained may be committed to, etc.**

References

Cited or applied in Application of Butts, 129 M 440, 289 P 2d 949, 951.

CHAPTER 201—CORONER'S INQUESTS

Section 94-201-6. Testimony in writing and where filed.

94-201-6. (12386) **Testimony in writing and where filed.** The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer and such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. Sec. 2795, Pen. C. 1895; re-en. Sec. 9668, Rev. C. 1907; re-en. Sec. 12386, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1959. Cal. Pen. C. Sec. 1515.

Amendment

The 1959 amendment added the last sentence to this section.

Repealing Clause

Section 2 of Ch. 56, Laws 1959, repealed all acts and parts of acts in conflict therewith.

CHAPTER 301—SEARCH WARRANTS

94-301-19. (12412) **Property, when to be restored.**

Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or search on premises where such activities took place. 19 ALR 2d 1228.

CHAPTER 501—UNIFORM CRIMINAL EXTRADITION ACT

94-501-1. Definitions.

References

Cited or applied in State ex rel. Middlemas v. District Court, 125 M 310, 233 P 2d 1038, 1039; State v. Booth, 134 M 235, 328 P 2d 1104, 1109.

94-501-3. Demand—form.

Improper Form, Discharge of Fugitive

If the demand for extradition to the governor of the asylum state is not in proper form, the alleged fugitive will be discharged. State v. Booth, 134 M 235, 328 P 2d 1104, 1109.

Substantial Charge of Crime

A substantial charge of crime in the required papers submitted by the demanding state is a sufficient basis for extradition. State v. Booth, 134 M 235, 328 P 2d 1104, 1110.

94-501-6. Extradition of persons not present in demanding state, etc.

References

Cited in State v. Booth, 134 M 235, 328 P 2d 1104, 1109.

94-501-7. Issuance of warrant of arrest by governor—recitals therein.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-501-20. Guilt or innocence of accused, when inquired into.

Operation and Effect

It is sufficient in habeas corpus proceedings to justify holding the petitioner if it is shown in Montana that the governor received from the governor of Oregon a copy of the affidavit made by the prosecuting witness, charging the defendant with a felony and also of the warrant of arrest issued by the judge of a district court of the state of Oregon and duly authenticated. State ex rel. Middlemas v. District Court, 125 M 310, 233 P 2d 1038, 1040.

CHAPTER 801—FINES AND FORFEITURES—DISPOSAL OF

Section 94-801-1. Fines, costs, and forfeitures, how disposed of.
94-801-2. Traffic fines collected from juvenile offenders—disposition.

94-801-1. (12433) **Fines, costs, and forfeitures, how disposed of.** All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must, save as hereinafter provided, be paid to the county treasurer of the county in which the court is held and if not otherwise provided by law, by him credited to the general school fund of said county. In the event the fine or forfeiture arises from an action commenced pursuant to section 94-301 or section 94-304 of this code, the residue thereof, after such costs are paid, may be directed by the court to be paid, in whole or in part, to the wife, or to the guardian or custodian of the child or children.

If the said fine or forfeiture is paid to the county treasurer at the time of such payment there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. Sec. 2910, Pen. C. 1895; re-en. Sec. 9715, Rev. C. 1907; re-en. Sec. 12433, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1923; amd. Sec. 1, Ch. 92, L. 1961. Cal. Pen. C. Sec. 1570.

Amendment

The 1961 amendment inserted the words "save as hereinafter provided" after "the residue must" in the first sentence; divided the former section into two sentences, the first and third sentences in the amended section; inserted the present second sentence; and, at the beginning of the present third sentence, substituted the words "If the said fine or forfeiture is paid to the county treasurer at the time of such payment" for "at the time of payment of any such fine or forfeiture."

Repealing Clause

Section 2 of Ch. 92, Laws 1961 repealed all acts and parts of acts in conflict therewith.

94-801-2. Traffic fines collected from juvenile offenders—disposition. All fines collected by the district courts from children under eighteen (18) years of age, for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen, together with all penalty assessments levied and paid as provided for in section 4 [75-5304] of this act, shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(a) Fines collected as the result of summonses issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;

(b) Fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund;

(c) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana and by him credited to the general fund of the state;

(d) All penalty assessments levied and paid as provided for in section 4 [75-5304] of this act shall be paid to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 149, L. 1961; amd. Sec. 11, Ch. 226, L. 1965.

Title of Act

An act to provide for the distribution of fines collected by district courts for the unlawful operation of motor vehicles by children under the age of eighteen (18) years; providing for time of such distribution; repealing all acts or parts of acts in conflict herewith.

Amendment

The 1965 amendment inserted "together with all penalty assessments levied and paid as provided for in section 4 of this act" after "highway patrolmen" in the first paragraph; and added paragraph (d).

Repealing Clause

Section 2 of Ch. 149, Laws 1961 repealed all acts and parts of acts in conflict therewith.

CHAPTER 901—RECIPROCAL ENFORCEMENT OF SUPPORT

(Repealed—Section 3, Chapter 208, Laws of 1961)

94-901-1 to 94-901-18. Repealed.

Repeal

These sections (Secs. 1 to 18, Ch. 222, L. 1951), relating to reciprocal enforcement of support, were repealed by Sec. 3, Ch. 208, Laws 1961. For new provisions, see secs. 93-2601-1 to 93-2601-40.

CHAPTER 1001—CRIMINAL LAW STUDY COMMISSION

Section 94-1001-1. Intent and purpose of act.
94-1001-2. Appointment of criminal law study commission—scope of work.
94-1001-3. Composition of commission—application for appointment.
94-1001-4. Distribution of proposed changes to bench and bar.
94-1001-5. Submission of final draft to supreme court.
94-1001-6. Notice by supreme court to bench and bar—hearings.
94-1001-7. Legislative adoption required.
94-1001-8. Changes suggested by supreme court.
94-1001-9. Employment of secretary and research services by commission.
94-1001-10. Reimbursement of commission members.
94-1001-11. Officers of commission—rules—records.

94-1001-1. Intent and purpose of act. The intent and purpose of this act is to establish a commission to suggest changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole.

History: En. Sec. 1, Ch. 103, L. 1963.

Title of Act

An act authorizing and empowering the supreme court of the state of Montana to recommend changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, for the purpose of simplifying judicial proceedings and promoting the speedy determination of litigation upon its merits; creating a commission to prepare suggested changes in the criminal law of the state of Montana and prescribing the membership and powers and duties of said commission; providing for employment of a secretary-stenographer of the commission and employment of research agencies, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes in the criminal law of the state of Montana shall be submitted to the Thirty-ninth Legislative Assembly of the state of Montana for its consideration; repealing all acts and parts of acts in conflict herewith and providing for an effective date of this act.

94-1001-2. Appointment of criminal law study commission—scope of work. That within thirty (30) days following the adjournment of this legislative assembly, the supreme court of Montana shall appoint a commission of eleven (11) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and finally prepare suggested changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, which suggested changes shall be comprehensive in scope.

History: En. Sec. 2, Ch. 103, L. 1963.

94-1001-3. Composition of commission—application for appointment. The commission shall be composed of the chief justice of the supreme court

of the state of Montana, or an associate justice of the supreme court designated by the chief justice, three (3) judges from the district court of the state, and seven (7) lawyers. The judges so selected shall be from a list of suggested members submitted to the supreme court by the president of the Montana judges' association. Any lawyer actively engaged in the practice of law in the state of Montana or members of the faculty of the Montana university law school may submit an application to the supreme court indicating a desire to serve on such commission. The supreme court shall select members of the commission from among the applicants. The supreme court shall have the power to provide for terms of office, removals from office, filling of vacancies and changes in personnel of the commission.

History: En. Sec. 3, Ch. 103, L. 1963.

94-1001-4. Distribution of proposed changes to bench and bar. The commission so appointed shall prepare its suggested changes and shall distribute copies to the bench and bar of the state for their consideration and suggestions as they may submit to the commission.

History: En. Sec. 4, Ch. 103, L. 1963.

94-1001-5. Submission of final draft to supreme court. The commission shall within six (6) months after distribution of copies of the suggested changes submit the tentative final draft of suggested changes in the criminal law of the state of Montana, to the supreme court for approval.

History: En. Sec. 5, Ch. 103, L. 1963.

94-1001-6. Notice by supreme court to bench and bar—hearings. The submission of the tentative final draft to the supreme court will be noticed by the court by mailing notice of hearing to all district judges of the state and all attorneys licensed to practice in the Montana courts, as shown by the records of the clerk of the supreme court, and heard by it within ninety (90) days after submission by the commission, and all interested persons and organizations may appear that day by petition specifying their suggestions or objections thereon.

History: En. Sec. 6, Ch. 103, L. 1963.

94-1001-7. Legislative adoption required. Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 7, Ch. 103, L. 1963.

94-1001-8. Changes suggested by supreme court. The supreme court of this state shall have the right to suggest changes and amendments to the criminal law of the state of Montana from time to time for consideration by the legislative assembly.

History: En. Sec. 8, Ch. 103, L. 1963.

94-1001-9. Employment of secretary and research services by commission. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix

the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 9, Ch. 103, L. 1963.

94-1001-10. Reimbursement of commission members. Members of said commission shall serve without compensation, but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 10, Ch. 103, L. 1963.

94-1001-11. Officers of commission—rules—records. The said commission shall from time to time elect one of its members as chairman, and may from time to time elect such other officers from among its membership as the commission may deem desirable. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 11, Ch. 103, L. 1963.

Separability Clause

Section 12 of Ch. 103, Laws 1963 read "If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Repealing Clause

Section 13 of Ch. 103, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 14 of Ch. 103, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 1101—INTERSTATE AGREEMENT ON DETAINERS

Section 94-1101-1. Agreement on detainers adopted—text.
94-1101-2. District courts to act.
94-1101-3. Enforcement and cooperation by public agencies.
94-1101-4. Escape from custody on detainer—penalty.
94-1101-5. Institutional officers to honor agreement.
94-1101-6. Coordinator of agreement—appointment—duties.

94-1101-1. Agreement on detainers adopted—text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status

of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial at the next term of court after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt request[ed].

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment

under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(b) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this act, the ap-

propriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963.

Title of Act

An act to provide for the reciprocal and expeditious disposition of detainers filed against inmates of prisons or other correctional institutions of party states; to provide for the speedy trial of persons confined in a penal or other correctional institution of a party state on charges and detainers based on untried indictments, informations or complaints and to provide for the final disposition of such charges and detainers; to provide that temporary custody of such prisoners may be made available to appropriate officers of party states for trial; to provide that escape from such temporary custody shall be punishable by confinement in the state prison for a term of not less than one year nor more than ten years; to provide for the appointment of a coordinator of this agreement; providing for an effective date and a repealing clause.

94-1101-2. District courts to act. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean; district courts.

History: En. Sec. 2, Ch. 215, L. 1963.

94-1101-3. Enforcement and cooperation by public agencies. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: En. Sec. 3, Ch. 215, L. 1963.

94-1101-4. Escape from custody on detainer—penalty. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information or complaint and who escapes therefrom, is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: En. Sec. 4, Ch. 215, L. 1963.

94-1101-5. Institutional officers to honor agreement. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: En. Sec. 5, Ch. 215, L. 1963.

94-1101-6. Coordinator of agreement—appointment—duties. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this act, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

History: En. Sec. 6, Ch. 215, L. 1963.

Transmittal of Copies of Act

Section 7 of Ch. 215, Laws 1963 read "Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments."

Repealing Clause

Section 8 of Ch. 215, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 215, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

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